

**Invitation for Bids for Diesel Fuel*****SOLICITATION INSTRUCTIONS*****Solicitation Summary Sheet****Solicitation Name:** Diesel Fuel**Solicitation Issuance Date:** Saturday, August 15, 2015; revised Tuesday, August 18, 2015**Solicitation Description:** Contractor shall supply approximately 620,000 annual gallons of CARB ULSD to an on-site 20,000 gallon UST through periodic truck deliveries. Contract includes a base year at a fixed price per gallon and an optional second year at a fixed price per gallon. Contract also includes the optional provision of B100 biodiesel fuel for blends up to B20.**Delivery/UST Location:** 550 Olive Street, Santa Barbara, CA 93101**Pre-Bid Meeting:** none**Pre-Qualification Documentation Email Deadline:** **Wednesday, August 26, 2015, 4:30 PM PDT****Sealed Bid Due Date/Time:** **Thursday, September 10, 2015, 2:00 PM PDT (NO fax or email bids)****Bid Submittal Location:** 550 Olive Street, Santa Barbara, CA 93101**Contract Award Date/Time:** **Thursday, September 10, 2015, by 4:30 PM PDT****Contract Period:** One-year period from December 1, 2015 – November 30, 2016, with option for second year.**Solicitation Contact:** Ken Mills, Project Manager, (805) 832-3024, [fuelbid@sbmtd.gov](mailto:fuelbid@sbmtd.gov)**Type of Contract:** Indefinite Quantity, Firm Fixed Price**Bonding Required:** none**Solicitation Cost Estimate:** none

***SANTA BARBARA METROPOLITAN TRANSIT DISTRICT***

**Invitation for Bids for Diesel Fuel**

***SOLICITATION INSTRUCTIONS***

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**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
**Invitation for Bids for Diesel Fuel**  
**SOLICITATION INSTRUCTIONS**

**1. PRE-BID SUBMITTAL REQUIREMENTS**

**1.1 IFB CONTENTS & CONTRACT DOCUMENTS**

These *Solicitation Instructions* provide direction on bidding and contract award process. The invitation for bids is composed of the following items which make up the bid packet and are available on MTD's website at <http://www.sbmtd.gov/business-and-employment/active.html>:

- ❑ *Solicitation Instructions* (the document presently being read)
- ❑ Attachments to *Solicitation Instructions*: Forms & Certifications
- ❑ *Statement of Work*
- ❑ *MTD Master Agreement*
- ❑ *FTA Contract Provisions*

Bidders should be certain to read all documents in this IFB in order to prepare prequalification documents and bids correctly and be fully aware of the contractual terms and conditions. Failure of a bidder to follow instructions may result in rejection or disqualification of its bid, and lack of knowledge of the contract terms shall not excuse it from its obligations.

**1.2 PROJECT SUMMARY DESCRIPTION**

The Santa Barbara Metropolitan Transit District (MTD) is issuing this *Invitation for Bids (IFB) for Diesel Fuel* to secure the purchase and delivery of approximately 620,000 gallons of diesel fuel to its on-site underground storage tank (UST) for usage by its fleet of public transit buses powered by diesel engines (the "project"). MTD is seeking bids to supply, sell and deliver to MTD "CARB" ultra-low sulfur diesel (ULSD) fuel. MTD is also seeking optional bids for biodiesel fuel to provide MTD the opportunity to purchase blended ULSD fuel up to a maximum of 20% by volume (i.e., B20).

**1.3 PRE-BID MEETING**

There is no pre-bid meeting for this solicitation.

**1.4 COMMUNICATIONS, REQUESTS & CLARIFICATIONS**

MTD will consider requests for clarifications or changes until Friday, August 28, 2015, at 5:00 PM local time. To be considered, such communications must be via e-mail to MTD at [fuelbid@sbmtd.gov](mailto:fuelbid@sbmtd.gov). Requests for changes must be provided with sufficient information to allow MTD to make a determination.

**1.5 IFB MODIFICATIONS & ADDENDA**

MTD reserves the right to amend this IFB through written addenda. No other form of communication with any officer, employee or agent of MTD shall be binding upon MTD. Addenda will be posted to MTD's website and concurrently sent via e-mail to all parties known to have received the IFB. Failure of a bidder to receive any addendum shall not relieve it from any obligation under its bid or under the IFB as clarified or modified.

**1.6 PRE-QUALIFICATION PROCESS**

In order to provide for contract award the same day that bids are received, MTD is pre-qualifying vendors. The pre-qualification process is used to determine the financial and technical capacity of the vendor to carry out the

project. This will provide the winning bidder the opportunity to quickly lock in its ULSD supply price. The pre-qualification process consists of submitting the information and forms described below in electronic format via email. **The pre-qualification information must be received at [fuelbid@sbmtd.gov](mailto:fuelbid@sbmtd.gov) no later than Wednesday, August 26, 2015, at 4:30 PM local time (PDT). FAILURE OF MTD TO RECEIVE THE PRE-QUALIFICATION INFORMATION BY EMAIL BY THE DEADLINE WILL AUTOMATICALLY DISQUALIFY THE VENDOR FROM SUBMITTING A BID. Do not include your price bid as part of the pre-qualification submittal.** It is strongly recommended that the bidder submit its pre-qualification package in advance of the deadline and contact the reception desk at MTD's administrative offices during regular business hours at (805) 963-3364 to verify MTD's receipt of the email. MTD plans to notify bidders by Wednesday, September 2, 2015 regarding the acceptability of their pre-qualification submittals.

Bidder Information Form—Provide the fully completed *Bidder Information* form included in this solicitation.

References, Suppliers & Subcontractors Form—Provide the fully completed *References, Suppliers & Subcontractors* form included in this solicitation. Work references should include customers similar in nature and fuel quantity requirements to MTD to the extent feasible. **If not the bidder itself, supplier(s) must include the ULSD producer(s) and subcontractor(s) must include fuel delivery trucking firm(s).** If these vary during the contract, list the anticipated three most frequently used suppliers and three most frequently used subcontractors. If additional space is needed, make copies of the blank form. It is imperative that current, accurate contact names, emails, and phone numbers are provided. It is strongly recommended that the bidder give advance notice to such contacts that MTD will be contacting them as references and that a response from them will determine your eligibility to bid.

Contract Terms Certification Form—Provide the signed and dated *Contract Terms Certifications* form included in this solicitation indicating that the bidder understands and agrees to the project requirements including all of the terms and conditions of the Diesel Fuel contract (see Section 3.5) to be awarded as a result of this IFB.

Lobbying Certification—Bid shall include the fully completed and signed *Lobbying Certification* form which is required by federal law because this is a federally funded project that will result in a total contract amount exceeding \$100,000.

Non-Collusion Declaration and Compensation Certification—Bid shall include the fully completed and signed *Non-Collusion Declaration and Compensation Certification* form included in this IFB.

Description of the Firm—Provide a description of your company including its line(s) of business, size, location(s), years in business, and other information to allow MTD to determine the capacity of the bidder to successfully undertake the project. If a large entity, information on the division of the firm that would be responsible for the project should be emphasized. Please limit such information to 10 pages and 5 MB in size.

Certificate of Insurance—Provide a Certificate of Liability Insurance listing policy coverages currently in effect for the bidder. Evidence of insurance ideally meets the minimum coverage stipulated in paragraph 18 of the *MTD Master Agreement*. If MTD is requiring greater or different coverage than currently held by the bidder, bidder must be capable of providing a Certificate of Insurance meeting MTD's insurance requirements prior to the start of the contract period, which bidder must certify to in the *Contract Terms Certification* form previously described. **However, if the insurance certificate supplied as part of the pre-qualification process is substantially less than MTD's required coverage in terms of policy types and dollar amounts, this will weigh negatively in the determination of the bidder's financial capacity to undertake the project and, thus, to submit a bid.**

## 2. BID PREPARATION & SUBMITTAL

### 2.1 MTD FORMS & CERTIFICATIONS

**Price Bid**—Bid shall include the fully completed and signed *Price Bid* form included in this IFB showing the unit price per gallon for supplying **and delivering** diesel fuel to MTD under the terms of the contract. Bidders shall submit pricing based on a fixed ULSD price per gallon for two one-year periods. **MTD, as a public transit bus operator, is exempt from both the State of California Diesel Fuel Tax of \$0.13 per gallon and the Federal Excise Tax on Diesel Fuel of \$0.244 per gallon. Bid prices must not include these taxes. Any California Air Resources Board Cap-and-Trade Program fee per gallon assessed on fuel delivered to MTD must not be included in the prices bid on the Price Bid form.** The method to calculate that fee is described in section 4.2 of the *Statement of Work*. **The bid must include a fixed price per gallon for CARB ULSD fuel for both the base year period from December 2015 through November 2016 and the optional year period from December 2016 through November 2017. FAILURE TO INCLUDE A BID FOR BOTH YEARS WILL RENDER THE BID NON-RESPONSIVE AND IT WILL NOT BE CONSIDERED.** How the option year will be considered is addressed in Section 3.3 below.

During the contract period, MTD may desire to utilize blended biodiesel up to B20 in its buses. The *Price Bid* form includes an **optional** section for submitting a fixed margin (premium or discount) to an OPIS benchmark to determine a floating B100 biodiesel price per gallon. The specific index that would be used is the *Biodiesel West B100 w/out RIN* index listed under the *Key Renewable Fuels Regional Averages* that is reported in the *OPIS Ethanol & Biodiesel Information Service* newsletter.

**Acknowledgement of Addenda**—Bidder shall acknowledge either the receipt of each addendum or that there were no addenda by including in its bid the fully completed and signed *Acknowledgement of Addenda* form included in this IFB. **FAILURE TO INCLUDE THE CORRECTLY COMPLETED AND SIGNED ACKNOWLEDGEMENT OF ADDENDA FORM WITH THE BID WILL RENDER THE BID NON-RESPONSIVE AND IT WILL BE REJECTED.**

### 2.2 BID SUBMITTAL & OPENING

One original and two complete copies of all required bid documents shall be submitted in a non-transparent, sealed envelope plainly marked on the exterior with the name of the bidder and "Diesel Fuel IFB." If **not** brought by hand to the bid opening in the downstairs auditorium at MTD's administrative offices at 550 Olive Street, Santa Barbara, CA, bids shall be delivered to:

Santa Barbara Metropolitan Transit District  
550 Olive Street  
2<sup>nd</sup> Floor Reception Desk  
Santa Barbara, CA 93101

If using delivery service, bids must still be enclosed in a sealed envelope within the delivery service packaging. **Sealed bids will be accepted at the 2<sup>nd</sup> floor reception desk or the downstairs auditorium at the address specified in this section until 2:00 PM local time on Thursday, September 10, 2015. Fax or email bids will not be considered. BIDS RECEIVED AFTER SUCH TIME WILL NOT BE CONSIDERED REGARDLESS OF THE REASON.** All bids received by the bid submission deadline will be opened and read aloud at an open public meeting immediately following the submission deadline.

### 2.3 WITHDRAWAL OF BIDS

A bidder may withdraw a bid prior to the bid opening by submitting a written request signed by the bidder's authorized representative. Such withdrawal does not prejudice the right to resubmit a bid by the deadline.

## **2.4 BID STIPULATIONS**

Bids submitted as a result of this solicitation become the property of MTD. MTD will not pay any cost incurred by bidder for preparation or delivery of its bid; reserves the sole right to review, accept or reject bids received; and reserves the right to cancel this solicitation in whole or in part if in its best interests to do so.

## **3. REVIEW & AWARD**

### **3.1 BID DEVIATIONS & COLLUSION**

MTD may reject any bid that includes unacceptable deviations or is not prepared in accordance with the instructions and requirements of this solicitation. MTD reserves the right to waive any defects, or minor informalities or irregularities in any bid which do not materially affect the bid or prejudice other bidders. If there is any evidence indicating that two or more bidders are in collusion to restrict competition or otherwise engaged in anti-competitive practices, the bids of all such bidders shall be rejected and such evidence may be a cause for disqualification of the participants in any future MTD solicitations.

### **3.2 RESPONSIVENESS**

MTD shall examine all eligible bids received to determine the responsiveness to the provisions of this solicitation. Bids that do not contain all required items or where such documents are substantially incomplete may be considered non-responsive and rejected by MTD.

### **3.3 PRICE BID OPTION CONSIDERATION**

As indicated in Section 2.1, bidders are required to submit a ULSD fixed price bid for an optional second year. After the bid opening, MTD will assess the responsive bids and determine whether or not to accept the optional second year bid. If the optional year is not accepted, the contract will be awarded to the party submitting the low base year period fixed price per gallon bid. If the optional year is exercised, the contract will be awarded to the party submitting the low average fixed price per gallon bid for the two years. The average bid will be determined as the addition of the price per gallon amounts for the two years divided by two. MTD reserves the right to reject all bids if determined to be in its best interests. If winning bidder includes a biodiesel bid, MTD will be entitled to have the ULSD blended up to B20 for any fuel delivery during the contract period.

### **3.4 CONTRACT AWARD**

If considered in MTD's best interest, the MTD General Manager or his designee will award a contract to the responsive and responsible low bidder no later than 4:30 PM local time on the day of the bid opening. A phone call and an email announcing and committing MTD to this award decision will be transmitted to the winning bidder immediately following the award but not later than 4:30 PM local time the day of the bid opening.

### **3.5 CONTRACT EXECUTION**

The contract will be executed as soon as practical after contract award and receipt of any required bidder insurance or other documents. The contract shall be composed of the *MTD Master Agreement*, the *FTA Contract Provisions*, the *Statement of Work*, and relevant portions of the Contractor's bid. In all cases, the most recent versions of the preceding documents—including any addenda thereto—shall be used in the final and binding agreement.

## **4. PROTEST PROCEDURES**

Procurement protest procedures have been established to ensure uniform, timely, and equitable consideration of all complaints received by MTD concerning its procurement activities. Such procedures may be found on MTD's website at the following link: <http://www.sbmtd.gov/business-and-employment/purchasing.html>.

***SANTA BARBARA METROPOLITAN TRANSIT DISTRICT***

**Invitation for Bids for Diesel Fuel**

***BIDDER PRE-QUALIFICATION FORMS***





**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**

**Invitation for Bids For Diesel Fuel**

**REFERENCES, SUPPLIERS & SUBCONTRACTORS**

Business Name of Bidder: \_\_\_\_\_

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***Credit References***

Include your primary bank and two firms that you **currently** purchase materials or services from on credit:

Bank Name: \_\_\_\_\_ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Vendor Name: \_\_\_\_\_ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Vendor Name: \_\_\_\_\_ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

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***Work References***

Include three current or recent customers for which you provided **similar services** to the project work:

Client Name: \_\_\_\_\_ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Client Name: \_\_\_\_\_ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Client Name: \_\_\_\_\_ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

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***Suppliers & Subcontractors***

Provide the following information for any **significant** suppliers or subcontractors to be used in the project:

Firm: \_\_\_\_\_ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Description of Work: \_\_\_\_\_

Firm: \_\_\_\_\_ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Description of Work: \_\_\_\_\_

Firm: \_\_\_\_\_ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Description of Work: \_\_\_\_\_

Firm: \_\_\_\_\_ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Description of Work: \_\_\_\_\_

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**

**Invitation for Bids for Diesel Fuel**

**CONTRACT TERMS CERTIFICATION**

Bidder certifies that it:

1. Has read, understands, and agrees to the terms and conditions of this solicitation and any ensuing contract that it is awarded as a result of this solicitation. Such documents include the *Solicitation Instructions*, *MTD Master Agreement*, *Federal Transit Administration Contract Provisions*, and *Diesel Fuel Statement of Work* and any other documents, terms, or conditions cited within them. **MTD will not negotiate or modify contractual terms and conditions unless it is in its best interest to do so.**
2. Has the ability and willingness to obtain insurance meeting the requirements indicated in paragraph 18 of the *Master Agreement* and that a Certificate of Liability Insurance meeting such requirements must be provided to MTD prior to contract implementation.

\_\_\_\_\_  
Authorized Official Signature

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Authorized Official Name

\_\_\_\_\_  
Authorized Official Title

\_\_\_\_\_  
Business Name of Bidder

(Signer must match authorized official shown on Bidder Information form)

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**

**Invitation for Bids for Diesel Fuel**

**LOBBYING CERTIFICATION**

The undersigned certifies to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Authorized Official Signature

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Authorized Official Name

\_\_\_\_\_  
Authorized Official Title

\_\_\_\_\_  
Business Name of Bidder

(Signer must match authorized official shown on Bidder Information form)

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**

**Invitation for Bids for Diesel Fuel  
NON-COLLUSION DECLARATION**

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_,  
(title) (business name of bidder)  
the party making the included bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.  
(date) (city) (state)

\_\_\_\_\_  
Authorized Official Signature

\_\_\_\_\_  
Authorized Official Name (printed)

**COMPENSATION CERTIFICATION**

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

\_\_\_\_\_  
Authorized Official Signature

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Authorized Official Name

\_\_\_\_\_  
Authorized Official Title

***SANTA BARBARA METROPOLITAN TRANSIT DISTRICT***

**Invitation for Bids for Diesel Fuel**

***BID SUBMITTAL FORMS***

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**

**Invitation for Bids for Diesel Fuel**

**PRICE BID**

**ULSD Fixed Price Base Year Bid**

**CARB Ultra-Low Sulfur Diesel (ULSD) Fuel Price Per Gallon for Deliveries to Santa Barbara MTD between December 1, 2015, and November 30, 2016**

\$ \_\_\_\_\_.\_\_\_\_ \_

**ULSD Fixed Price Option Year Bid**

**CARB Ultra-Low Sulfur Diesel (ULSD) Fuel Price Per Gallon for Deliveries to Santa Barbara MTD between December 1, 2016, and November 30, 2017**

\$ \_\_\_\_\_.\_\_\_\_ \_

Submittal of both base year and option year ULSD bid is MANDATORY

**B100 Biodiesel Bid**

Submittal of biodiesel bid is OPTIONAL

**Margin (Premium or Discount) to OPIS West Biodiesel B100 w/out RIN Price Per Gallon for B100 Biodiesel**

**Premium**   
**Discount**

\$ \_\_\_\_\_.\_\_\_\_ \_

The Bidder hereby represents and warrants that:

1. Its price bid is exclusive of all governmental taxes and fees (including those which are added to invoices as described in Section 4.2 of the *Statement of Work* which includes the CA Cap-Trade program fee) and inclusive of any transportation and delivery charges.
2. It has sufficiently informed itself in all matters affecting the performance of the work, or the furnishing of the labor, supplies, material, or equipment called for in carrying out the project and associated Agreement.
3. Its bid has been thoroughly checked for errors and omissions and the costs, prices, hours, rates, and any other constituents of this Price Bid are a complete and correct statement of its price for performing all project work required by the Agreement.
4. Its bid is genuine, not sham or collusive, nor made in the interest of any person not herein named; that it has not in any illegal manner sought to secure for itself any advantage over any other bidder.
5. Its bid is valid until 4:30 p.m. Pacific Time on the bid due date.

\_\_\_\_\_  
Authorized Official Signature

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Authorized Official Name

\_\_\_\_\_  
Authorized Official Title

\_\_\_\_\_  
Business Name of Bidder

(Signer must match authorized official shown on Bidder Information form)

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**

**Invitation for Bids for Diesel Fuel**

**ACKNOWLEDGEMENT OF ADDENDA**

The undersigned acknowledges either that there were no addenda to the solicitation or that the Bidder received the following addenda to this *Invitation for Bids for Diesel Fuel* and has incorporated information or changes in said addenda within its bid.

No Addenda

**OR**

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

\_\_\_\_\_  
Authorized Official Signature

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Authorized Official Name

\_\_\_\_\_  
Authorized Official Title

\_\_\_\_\_  
Business Name of Bidder

(Signer must match authorized official shown on Bidder Information form)



## ***Diesel Fuel***

# ***Statement of Work***

*Revised August 18, 2015*

**Santa Barbara Metropolitan Transit District  
550 Olive Street • Santa Barbara, CA 93101  
Phone: (805) 963-3364 • Fax: (805) 963-3365 • Website: [www.sbmtd.gov](http://www.sbmtd.gov)**



# SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

## *Diesel Fuel Statement of Work*

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## 1.0 PROJECT SUMMARY & GENERAL REQUIREMENTS

### 1.1 PROJECT SUMMARY

The Santa Barbara Metropolitan Transit District (MTD) desires to purchase No. 2 Ultra-Low Sulfur Diesel (ULSD) and have it delivered to its on-site underground storage tank for usage by its fleet of public transit buses powered by diesel engines (the "project"). To meet this desire, Contractor shall supply, sell and deliver to MTD "CARB" diesel fuel on an "as needed" basis with an expected annual volume of 620,000 U.S. gallons. Contractor shall provide the fuel in the industry standard load size of approximately 7,500 gallons within 48 business weekday hours of order by MTD. All fuel delivered to MTD by Contractor shall meet or exceed applicable government agency and ASTM standards in effect at the time of delivery. If Contractor provided the optional bid for B100 biodiesel, Contractor shall also provide to MTD blended biodiesel up to a maximum of 20% by volume and all biodiesel ordered shall meet the applicable specifications contained in this Statement of Work.

### 1.2 LIMITATIONS OF STATEMENT OF WORK

This Statement of Work does not necessarily include a full and complete description of all required parts, materials, resources, services, or processes required to fulfill the project. Information provided in this Statement of Work is provided only for those materials, procedures, and values that are considered key to achieving the overall goals and objectives of the project. Contractor is expected to be experienced in and adhere to the customs of the trade. Any substantive deviations from such customs shall have been explicitly identified to MTD in Contractor's bid and either accepted or rejected prior to the award of the Agreement for the project.

### 1.3 REFERENCE DOCUMENTS

The following documents, some of which are copyrighted and may require fees to access, are incorporated herein this Statement of Work and considered an integral part thereof. Contractor is expected to have access to, be familiar with, and adhere to these documents and any revisions or updates thereto unless specified otherwise herein.

- *Standard Specification for Diesel Fuel Oils*, American Society of Testing and Materials (ASTM) Designation D975 – 15
- *Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels*, ASTM Designation D6751 – 15a
- *Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)*, ASTM Designation D7467 – 15
- *Standards for Diesel Fuel*, California Code of Regulations Title 13, Division 3, Chapter 5, Article 2, §§2281 – 2285
- *Engine Requirements — Lubricating Oil, Fuel, and Filters*, Document DDC-SVC-BRO-0001, Detroit Diesel Corporation (2015), [<http://www.ddcsn.com/cps/rde/xbcr/ddcsn/DDC-SVC-BRO-0001.pdf>]
- *Fuels for Cummins Engines*, Service Bulletin 3379001 Cummins Inc., August 28, 2013 [HTTP://WWW.CUMMINS.DK/FILEADMIN/DOKUMENTER/SERVICE\_BULLETINS\_LITTERATUR/BULLETINS\_FUEL/SBN\_FUEL\_3379001.PDF]
- Fleetguard Biodiesel Material Compatibility, Cummins Filtration, 2009 [[http://www.cumminsfiltration.com/pdfs/product\\_lit/americas\\_brochures/MB10053.pdf](http://www.cumminsfiltration.com/pdfs/product_lit/americas_brochures/MB10053.pdf)]
- *BQ-9000 Quality Management System Producer Requirements*, National Biodiesel Accreditation Commission, Revision 8, January 20, 2014 [<http://www.bq-9000.org/documents/default.asp>]
- *BQ-9000 Quality Management System Marketer Requirements*, National Biodiesel Accreditation Commission, Revision 7.1, May 30, 2014 [<http://www.bq-9000.org/documents/default.asp>]
- *Biodiesel Handling and Use Guide (Fourth Edition-Revised)*, Report NREL/TP-540-43672, U.S. Department of Energy, National Renewable Energy Laboratory, Golden, CO, revised January 2009 [<http://www.nrel.gov/vehiclesandfuels/npcf/pdfs/43672.pdf>]

## 2.0 TECHNICAL SPECIFICATIONS

### 2.1 DIESEL GRADE & BIODIESEL BLEND

Contractor shall provide MTD with No. 2 Ultra-Low Sulfur Diesel (ULSD) fuel. If Contractor provided the optional bid for B100 biodiesel and MTD chooses to order it, ULSD shall be blended with B100 biodiesel up to a maximum of 20% biodiesel by volume (i.e., B20). MTD may, in its sole discretion for each delivery, specify that the blended fuel load be any standard biodiesel blend between 2% and 20%.

### 2.2 COMPLIANCE WITH ASTM STANDARD SPECIFICATIONS

Any fuel provided, blended and/or delivered under this Agreement shall conform to the applicable ASTM standard specification, unless specified otherwise herein this Statement of Work. Specifically:

- ULSD fuel, including blends with biodiesel up to 5%, shall comply with the latest version of *ASTM Standard D 975: Standard Specification for Diesel Fuel Oils* for Grade No. 2-D S15.
- Biodiesel used for blending shall comply with the latest version of *ASTM Standard D6751: Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels* for Grade S15.
- Biodiesel blends greater than 5% shall comply with the latest version of *ASTM Standard 7467: Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)* for Grade B6 to B20 S15.

### 2.3 COLD WEATHER OPERABILITY

The MTD service area has a climate classified as Mediterranean. Winters are generally mild with average temperature lows typically in the 40s Fahrenheit (°F). However, winter months do experience drops into the 30s °F, and record lows are in the low 20s °F. As a result, any fuel provided under this Agreement, including biodiesel blends up to 20%, shall comply with the following requirements:

- During November through February, a Maximum Cloud Point of 30°F (-1°C)
- During March through October, a Maximum Cloud Point of 36°F (2°C)

### 2.4 ULTRA-LOW SULFUR DIESEL

#### 2.4.1 Compliance with CARB Requirements

ULSD fuel provided under this Agreement shall comply with all current, applicable California Air Resources Board (CARB) requirements. While not a complete list of requirements, those of particular relevance contained in the California Code of Regulations Title 13 Sections 2281 – 2285 are as follows:

- Maximum sulfur content of 15 parts per million by weight
- Maximum aromatic hydrocarbon content of 10% by volume

#### 2.4.2 Compliance with Engine Manufacturer Requirements

MTD utilizes both Detroit Diesel and Cummins diesel engines in its fleets. In order to meet engine manufacturer warranty requirements, all ULSD provided under this Agreement shall comply with all current, applicable engine manufacturer requirements. While not a complete list of such standards, some of those contained in the engine manufacturer documents cited in Section 1.3 Reference Documents above are as follows:

- Distillation temperature min and max for various recovery rates (ASTM only at 90% recovery)
- Minimum Cetane Number of 43 (exceeds ASTM D 975 standard of 40)
- Maximum HFRR wear scar diameter (lubricity) of 460 microns (exceeds ASTM standard of 560)
- Minimum SLBOCLE Lubricity Value of 3,100 grams (not an ASTM D 975 standard)
- API gravity at 60°F of between 33 and 38 (not an ASTM D 975 standard)

## 2.5 BIODIESEL & BLENDING (if contract includes biodiesel)

### 2.5.1 B100 Requirements

MTD has demanding emission and performance requirements that dictate an exacting and consistent biodiesel specification so as to achieve reliable results. Should a problem arise, MTD must have the ability to ascertain the source of the problem and be able to rule out biodiesel as the root cause. This biodiesel specification provides MTD with the necessary quality control measures. In addition to the previously cited ASTM standards, all B100 biodiesel provided under this Agreement shall:

- Be compatible for use with all types of diesel engines including those manufactured by Cummins and Detroit Diesel. The biodiesel and biodiesel blend shall in no way harm MTD diesel engines.
- Be manufactured at a facility at which the producer has a current *BQ-9000 Producer* certification (includes provisional status) issued by the National Biodiesel Accreditation Commission (NBAC); or be distributed by a company that has a current *BQ-9000 Marketer* certification issued by the NBAC.
- Be free of contamination resulting in bacteria or condensation. If bacteria are present, the appropriate treatment shall be applied to the biodiesel at contractor's expense.
- Be filter cleaned to 3 microns or less at the processing plant; and be filtered to 10 microns on transfer from storage tanks to truck for delivery to MTD.
- Be no older than four (4) months from the date of production at the time of delivery.
- Be clear, bright, and visually free from undissolved water, sediment, and suspended matter.

### 2.5.2 Feedstock

The use of domestic feedstock grown on non-food producing land is highly encouraged. Subject to meeting all of the requirements of these technical specifications, the recommended feedstock should also include the maximum use of residual/waste products from sources such as used domestic cooking oils, animal rendering processes, etc.

### 2.5.3 Blending & Handling

Biodiesel blending and handling shall conform to industry standard, applicable requirements in the most recent revision of the *BQ-9000 Quality Management System Marketer Requirements* issued by the National Biodiesel Accreditation Commission, and applicable recommendations in the most recent edition of the *Biodiesel Handling and Use Guide* issued by the U.S. Department of Energy. Below are requirements or recommendations that MTD considers of particular importance, which may be in addition to or supersede industry standard and/or the cited recommendations and requirements:

- Either splash or in-line (injection) blending are acceptable methods of creating the biodiesel blend, except in no case shall blending first occur as it is loaded into the MTD underground storage tank.
- If blending is first achieved through loading of the delivery truck, it is preferred that the B100 be loaded in each compartment prior to the ULSD. Regardless of loading order, Contractor is responsible for ensuring product is blended and tested per the documents cited herein.
- The B100 shall be transferred using clean, dedicated hoses that are properly labeled.
- All fuel transfers, regardless of stage, shall be metered and not measured by weight.

## 2.6 CERTIFICATIONS, SAMPLING & TESTING

### 2.6.1 MTD Fuel Conformity Testing

MTD shall have the right and may perform random sampling of Contractor-delivered fuel for determining conformity with these technical specifications. Such sampling and testing shall be undertaken at MTD's sole discretion and cost. MTD shall only use qualified third-party laboratories to perform such analysis. Laboratory findings of non-conformity with the specification shall be considered a breach of contract subject to the termination provisions contained in the Agreement as a result of:

- Two (2) successive failures to meet these technical specifications; or,
- Three (3) failures to meet these technical specifications in any 12 month period.

### **2.6.2 Contractor Requirements (if contract includes biodiesel)**

Prior to the first fuel delivery under the Agreement, Contractor shall provide MTD with any appropriate Material Safety Data Sheets (MSDS) for the product(s) being delivered. Additionally, so as to rule out biodiesel as the cause of any problems, Contractor shall be responsible for ensuring that fuel samples are obtained and handled as specified below:

- Samples shall be in one-quart volumes stored in a container appropriate for later lab testing.
- Samples shall be retained and available to MTD for a period of 30 days following delivery.
- One sample of the blended fuel shall be taken from the middle of a delivery truck compartment at the time of delivery.
- If blending is through loading of the delivery truck (i.e., fuel is not pre-blended), a sample of the B100 shall also be taken at the time the biodiesel is loaded into the delivery truck.

Contractor shall also obtain the Certificate of Analysis (COA) for the specific biodiesel lot used for each blend delivered to MTD. A copy of each such COA shall be provided to MTD via a method to be mutually agreed upon between Contractor and MTD.

## **3.0 ORDERING & DELIVERY**

### **3.1 ORDERING FUEL**

#### **3.1.1 Method & Hours**

Contractor shall provide MTD with a phone number, web site, or other appropriate and reliable means for ordering fuel as needed. At a minimum, such ordering system shall be capable of accepting orders on all non-federal holiday weekdays between 8:00 AM and 5:00 PM Pacific Time. MTD shall only order fuel in full load capacities (approximately 7,500 gallons). MTD shall make effort to ensure that the UST to be loaded by Contractor contains adequate available capacity to fully receive the full load although this shall not relieve Contractor of verifying the capacity as described in Section 3.2.2 below.

#### **3.1.2 Estimated Volume & Frequency**

MTD's estimated annual fuel consumption is 620,000 U.S. gallons. Given MTD's single 20,000 gallon UST and restriction of delivery to non-holiday weekdays, delivery loads will be required approximately every three weekdays. These volume figures are estimates only and subject to change. MTD is under no obligation to purchase a minimum annual volume under the Agreement.

### **3.2 DELIVERY**

#### **3.2.1 Location, Timeframe & Hours**

Contractor shall deliver all fuel orders to MTD at 550 Olive Street, Santa Barbara, CA no later than two (2) non-federal holiday weekdays following receipt of such order from MTD. Contractor shall make a concerted effort to restrict delivery times to non-federal holiday weekdays between 8:00 AM and 4:00 PM Pacific Time. Given the MTD facility layout and workflow, deliveries at any other time are extremely inconvenient and greatly discouraged. Contractor or its agent shall contact MTD by telephone in advance for deliveries expected outside of this timeframe. Under no circumstances will deliveries be received by MTD between the hours of 12:00 AM and 5:00 AM except in an emergency and specifically approved in advance by MTD.

### 3.2.2 Driver Requirements

Contractor shall require delivery truck driver to physically "stick" the UST and print the Veeder Root tank gauge report before unloading fuel in order to verify adequate UST unused capacity. Driver shall also print a tank gauge report after unloading is complete. MTD shall provide the measurement stick and instructions for report printing. Driver shall attach both tank gauge reports to the delivery receipt. Upon completion of fuel unloading, driver shall obtain a receiving signature from MTD's Materials Manager, Steve Hahn, or another Maintenance Department staff member in his absence. It shall be the responsibility of the driver to actively seek such personnel. Only when such personnel are not available shall other MTD employees sign the receipt. One copy of the MTD-signed delivery receipt that contains industry standard fuel receipt information shall be left with the MTD signer. All delivery receipts require a valid MTD employee signature.

## 4.0 PRICING & TAXES

### 4.1 FUEL PRICE DETERMINATION

#### 4.1.1 Fixed ULSD Price

Contractor shall bill MTD for each gallon of CARB Ultra-Low Sulfur Diesel (ULSD) delivered to MTD at the fixed price per gallon stipulated for the applicable contract period in the Agreement that this *Statement of Work* is applicable to. The addition of the Cap & Trade tax is addressed below and is not included in the Contract fixed price per gallon.

#### 4.1.2 Floating B100 Price (if contract includes biodiesel)

For any fuel delivery that includes a blend of ULSD and B100, the price of B100 gallons delivered shall be equal to the OPIS *Biodiesel West B100 w/out RIN* index price listed under the *Key Renewable Fuels Regional Averages* reported in the OPIS *Ethanol & Biodiesel Information Service* newsletter plus the *B100 Margin* bid by the Contractor and included in the Agreement. The OPIS index price shall be applicable for deliveries from the Monday of the report until the following Sunday. Contractor shall include a copy of the applicable OPIS report page with each invoice. Contractor shall pass through the "blenders" tax credit to MTD with each biodiesel purchase which shall be reflected on the invoice for the delivery including biodiesel.

### 4.2 TAXES, FEES & EXEMPTIONS

Due to its status as a California special district public transit operator, MTD is exempt from both the State of California Diesel Fuel Tax (presently \$0.13 per gallon) and the Federal Excise Tax on Diesel Fuel (presently \$0.244 per gallon). Invoices shall take these exemptions and the Federal biodiesel "blenders" tax credit into account. Applicable fees and taxes shall be included as separate line items on each billing invoice. MTD understands that such current billable fees and taxes and the appropriate rates include:

Santa Barbara County Sales Tax	8.00%
Federal LUST Tax	\$0.00100 per gallon
Federal Oil Spill Liability Tax	\$0.00190 per gallon
California Cap-and-Trade Program Fee	see <b>mandatory</b> calculation method below

The California Cap-and-Trade Program fee per gallon that shall be paid by MTD shall be based on the previous day *OPIS Prompt Calif. Cap-at-the-Rack Prices (cts/gal)* as currently posted on page 5 of *OPIS West Coast Spot Market Report*. The amount shown under the "Price" column for "CARB No. 2" shall be included as a separate line on each invoice. The fee for Saturday, Sunday and Monday pricing will be based on Friday's posted price and prices for holidays will be the same as the last valid day.

Contractor shall provide MTD with any required exemption forms to prevent inclusion of exempt taxes on Contractor billings. In instances where Contractor is at fault for inclusion of inapplicable fees or taxes on billings, MTD shall have the right to adjust the payment for such billings to remove such charges.

## **5.0 WARRANTY**

### **5.1 WARRANTY DESCRIPTION**

Contractor shall warrant that fuel delivered to MTD under this Agreement is compatible for use with diesel engines, including Cummins and Detroit Diesel engines, and shall not harm MTD diesel engines. Contractor agrees to reimburse MTD for damages to vehicles, engines or any vehicle systems caused by Contractor fuel that does not comply with this Statement of Work and the technical specifications contained therein.

### **5.2 DEFINITION OF DAMAGES**

Damages shall be defined as MTD incurring any costs as a result of actions on the part of the Contractor including the delivery of inappropriate fuel into MTD fuel storage tanks. Specific damages may take the form of, but are not limited to, costs incurred by MTD for removal of inappropriate fuel from MTD storage tanks and storage tank fuel plumbing or lines; repair of any vehicular component necessitated as a result of operating such vehicle with the inappropriate fuel; or vehicular mishaps including accidents involving third-parties as a result of operating a vehicle on inappropriate fuel.

### **5.3 REPAIR OF DAMAGES**

MTD reserves the right to perform the work or contract with a third party to perform the work with reimbursement by the Contractor for all reasonable expenses associated with the damages defined in 5.2 above. MTD shall be reimbursed by the Contractor for labor performed by MTD for repair of damages at the straight-time wage plus forty percent (40%) for fringe benefit costs. MTD shall be reimbursed by the Contractor for materials required to correct damages at the full invoice cost of such parts, including taxes and freight, plus five percent (5%). MTD shall be reimbursed by the Contractor for third party repairs at the full invoice cost plus five percent (5%).

# SANTA BARBARA METROPOLITAN TRANSIT DISTRICT DIESEL FUEL

## MASTER AGREEMENT with [contractor name in caps]

THIS AGREEMENT is entered into by and between Santa Barbara Metropolitan Transit District, an incorporated transit district under Sections 95000, et seq. of the California Public Utilities Code ("MTD"), and [contractor name], a [state name] [business type] ("Contractor"), at Santa Barbara, California, as of the later date set forth below the signatures executing this Agreement.

WHEREAS:

- A. MTD desires to engage Contractor for the on-going, as-needed supply and delivery of CARB diesel fuel to its on-site storage tanks for powering its fleet of public transit buses (the "Project");
- B. Contractor represents that it has the knowledge and experience to carry out the Project, and desires to carry out the Project pursuant to the terms and conditions hereof, and;
- C. Based upon the representations made by Contractor, MTD desires to retain the services of Contractor to carry out the aforesaid Project, upon the within terms and conditions.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Effect of Recitals. The foregoing recitals are hereby made express provisions of this Agreement.
2. FTA Provisions. The Project is funded in part by the Federal Transit Administration of the U.S. Department of Transportation and, as such, this Agreement is subject to the terms and conditions contained in *Federal Transit Administration Contract Provisions* which is attached hereto as Exhibit "A" and incorporated herein by this reference.
3. Public Works Provisions. Not applicable to this contract
4. Statement of Work. MTD has heretofore issued on August 12, 2015, the statement of work contained in Invitation for Bids (IFB) for Diesel Fuel, a true copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference.
5. Bid. Contractor has heretofore submitted on August 27, 2015, a bid to carry out the Project, true copies of relevant parts that are attached hereto as Exhibit "C" and incorporated herein by this reference.
6. Order of Control. Contractor shall carry out the Project described in Exhibit "B" to this Agreement for the price quoted in Exhibit "C". All work and services shall be performed according to and controlled by the terms and provisions of this Agreement and the exhibits attached hereto. In the event of any conflict between the contract documents, the following order of control shall prevail: MTD Master Agreement, Exhibit "A", Exhibit "B", Exhibit "C".
7. Contract Price. Contractor shall carry out the Project for the prices, differentials and/or other applicable terms contained on the Price Bid form which is in accordance with Exhibit "C".
8. Payment Schedule. Contractor shall submit an invoice to MTD upon each diesel fuel delivery to MTD. Payment from MTD shall be made to Contractor no later than thirty (30) days after receipt of a valid invoice which shall be sent to: Santa Barbara MTD, Attn: Accounts Payable, 550 Olive Street, Santa Barbara, CA 93101.
9. Taxes. MTD is exempt from the State of California Diesel Fuel Tax of \$0.13 per gallon and the Federal Excise Tax on Diesel Fuel of \$0.244 per gallon. Unless specified otherwise in the Agreement, MTD is subject to all other applicable federal, state, and local taxes and fees including sales tax for Santa Barbara County. Such applicable taxes and fees shall be included in Contractor invoices.
10. Contract Term. Contractor shall accept and fill orders from MTD for the supply and delivery of any item provided under this Agreement to MTD for a period of one year commencing on December 1, 2015. [modify to include ULSD option year if accepted.]



11. Delivery & Freight. Unless specified otherwise in the statement of work, any item provided under this Agreement shall be delivered FOB Santa Barbara to 550 Olive Street, Santa Barbara, CA 93101. Any Project freight and delivery charges shall have been included in the Contractor's bid price and shall not be paid otherwise by MTD.

12. Title & Risk of Loss. The Contractor shall have title to and bear the risk of any loss of or damage to any item provided hereunder until delivered and, if applicable pursuant to this Agreement or standard industry practice, installed or otherwise set up for usage. Upon such delivery and applicable installation and setup, title shall pass from the Contractor to MTD, and the Contractor's responsibility for loss or damage shall cease, except for loss or damage resulting from the Contractor's negligence. Such passing of title shall not constitute acceptance of an item by MTD. The Contractor shall further warrant that the title to any item provided hereunder is free from all claims, encumbrances and liens.

13. Damages. All losses or damages arising from any unforeseen circumstances, either natural or artificial, which may be encountered by the Contractor during the performance of the Project under this Agreement shall be sustained solely by the Contractor. This provision shall also apply to losses or damages resulting from any act or omission not authorized by this Agreement on the part of the Contractor or any agent or person employed by the Contractor.

14. Defective, Damaged or Noncompliant Work. Any items, services, work or systems acquired pursuant to this Agreement found to be defective, damaged or non-compliant with the statement of work at the time of delivery or installation shall be replaced by the Contractor without additional cost to MTD. If the Contractor should fail to promptly comply with any order to replace or repair any defective items, services, work or systems, MTD shall have the authority to deduct the cost of such replacement or repair from any compensation due or to become due to the Contractor. Nothing in this section shall limit or restrict any warranty provisions of this Agreement or any exhibits hereto.

15. Acceptance. Terms of Acceptance are contained in the statement of work.

16. Warranty. Pursuant to the warranty provisions contained in the statement of work, the Contractor shall warrant to MTD that, for the specified period after MTD's full acceptance of items, services, work or systems, each shall conform with the requirements hereof and be free of defects. The rights of MTD hereunder are in addition to, and not limited by, the Contractor's standard warranties. Acceptance of items, services, work or systems by MTD, or payment therefor, shall not relieve the Contractor of its obligations thereunder.

17. Changes. Any changes or modifications to this Agreement must be in writing, and agreed to by both parties.

18. Insurance.

a. Contractor's Insurance Representations to MTD.

i. It is expressly understood and agreed that the insurance coverages required herein:

A. represent MTD's minimum requirements and are not to be construed to void or limit Contractor's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages Contractor should or should not maintain for its own protection; and

B. are being, or have been, obtained by Contractor in support of Contractor's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy, or failure of any insurance company carrying insurance of Contractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate, or waive any of the provisions of this Agreement.

ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under this Contract. If Contractor shall fail to remedy such breach within five (5) business days after written notice by MTD, Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to MTD from such breach, unless a written waiver of the specific insurance requirement(s) is provided to Contractor by MTD. In the event of any failure to Contractor to comply with the provisions of this portion of the Agreement, MTD may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to Contractor, purchase such insurance, at Contractor's expense,

provided that MTD shall have no obligation to do so and if MTD shall do so, Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

b. Conditions Affecting All Insurance Required Herein.

- i. Cost of Insurance. All insurance coverage shall be provided at Contractor’s sole expense.
- ii. Maintenance of Insurance. All insurance coverage shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement.
- iii. Status and Rating of Insurance Company. All insurance coverage shall be written through insurance companies admitted to do business in California and with a Best’s Financial Strength Rating of A- or better, as shown in the on-line version of Best’s Rating & Criteria Center.
- iv. Restrictive, Limiting, or Exclusionary Endorsements. All insurance coverage shall be provided to Contractor Parties in compliance with the requirements herein.
- v. Limits of Liability. The limits of liability may be provided by a single policy of insurance or by a combination of primary and umbrella policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.
- vi. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage. In the event of cancellation, nonrenewal, or material reduction in coverage affecting the certificate holder, thirty (30) days prior written notice shall be given to the certificate holder by certified mail, return receipt requested, except in the event of cancellation for nonpayment, in which event fifteen (15) days prior written notice shall be given. If insurer will not include in its coverage such written notifications, it shall be incumbent upon Contractor to comply with such written notification requirements.
- vii. Additional Insured Status. Additional insured status shall be provided in favor of MTD and its officers, employees and agents, including consultants, on all liability insurance required herein except workers’ compensation/employer’s liability and the certificate of insurance shall reflect same. Such additional insured coverage shall be primary to and shall seek no contribution from all insurance available to MTD, with MTD’s insurance being excess, secondary, and noncontributing.
- viii. Waiver of Subrogation. All insurance coverage carried by Contractor required herein shall provide a waiver of subrogation in favor of MTD for all loss covered by such insurance, and Contractor waives all rights of action against MTD for such loss.
- ix. Primary Liability. All insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to MTD, with MTD’s insurance being excess, secondary, and noncontributing. Where necessary, coverage shall be endorsed to provide such primary liability, and the certificate of insurance shall reflect same.
- x. Deductible/Retention. All insurance required for this project shall have a maximum deductible or self-insured retention of \$25,000 per policy.
- xi. Claims Against Aggregate. MTD must be notified in writing by Contractor at MTD’s address set forth herein immediately upon knowledge of possible claims against Contractor that might cause a reduction below seventy-five (75%) of any aggregate limit of any primary policy.

c. Commercial General Liability Insurance.

- i. Coverage. Such insurance shall cover liability arising out of all locations and operations of Contractor, including but not limited to liability assumed under this Agreement (including the tort liability of another assumed in a business contract). Defense shall be provided as an additional benefit and not included within the limit of liability.
- ii. Form. Commercial General Liability Occurrence form, at least as broad as an unmodified ISO CG 00 01 10 93 or its equivalent.
- iii. Amount of Insurance. Coverage shall be provided with limits of not less than:

A. Each Occurrence Limit	\$1,000,000
B. General Aggregate Limit	\$2,000,000
C. Product-Completed Operations Aggregate Limit	\$2,000,000

D. Personal and Advertising Injury Limits	\$1,000,000
E. Fire Damage (any one fire)	\$50,000
F. Medical Expense (any one person)	\$5,000

iv. Required Endorsements.

- A. Additional Insured status as required in 18(b)(vii), above.
- B. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18(b)(vi), above.
- C. Personal Injury Liability.
- D. Primary Liability, as required in 18(b)(ix), above.
- E. Waiver of Subrogation, as required in 18(b)(viii), above.
- F. Continuing Commercial General Liability Insurance: Contractor shall maintain such insurance in identical coverage, form, and amount, including required endorsements, for at least three (3) years following the date of acceptance of the last delivery by MTD; and shall continue to name SBMTD as Additional Insured during that 3 year period.

d. Auto Liability Insurance.

- i. Coverage. Such insurance shall cover liability arising out of Any Auto (including owned, hired, and non-owned).
- ii. Form. Business Auto Form (at least as broad as an unmodified ISO CA 0001 or its equivalent).
- iii. Amount of Insurance. Coverage shall be provided with a limit of not less than \$1,000,000, combined single limit.
- iv. Required Endorsements.
  - A. Additional Insured status as required in 18(b)(vii), above.
  - B. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18(b)(vi), above.
  - C. Waiver of Subrogation, as required in 18(b)(viii), above.

e. Pollution/Environmental Liability Insurance.

- i. Coverage. Such insurance shall cover liability arising out of any sudden accidental pollution and related cleanup costs incurred by the Contractor or Subcontractor, all arising out of the work or services, including transportation, to be performed under this Agreement. Such coverage may be satisfied with endorsements to Commercial General Liability or Auto Liability insurance meeting these requirements.
- ii. Form. n/a
- iii. Amount of Insurance. Coverage shall be provided with a limit of not less than \$1,000,000, combined single limit (if Excess Liability/Umbrella coverage does not apply to this insurance, the limit shall be increased to \$5,000,000).
- iv. Required Endorsements.
  - A. Additional Insured status as required in 18(b)(vii), above.
  - B. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18(b)(vi), above.
  - C. Waiver of Subrogation, as required in 18(b)(viii), above.

f. Workers' Compensation/Employer's Liability Insurance.

- i. Coverage. Such insurance shall cover liability arising out of Contractor's employment of workers and anyone for whom Contractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted.
- ii. Amount of Insurance. Coverage shall be provided with a limit of not less than:
  - A. Workers' Compensation:           Statutory limits
  - B. Employer's Liability:           \$1,000,000 each accident and disease.

iii. Required Endorsements.

- A. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18(b)(vi), above.
- B. Waiver of Subrogation, as required in 18(b)(viii), above.

g. Excess Liability/Umbrella Insurance.

- i. Coverage. Such insurance shall be excess over and be no less broad than all coverages described above and shall include a drop-down provision. If such coverage cannot apply to Pollution/Environmental Liability insurance, the Pollution/Environmental amount insurance shall be increased to \$5,000,000.
- ii. Form. This policy shall have the same inception and expiration dates and the commercial general liability insurance required above.
- iii. Amount of Insurance. Coverage shall be provided with a limit of not less than \$4,000,000, combined single limit.

19. Bonding. Not applicable to this contract.

20. Termination. See Paragraph 21 (Termination) in *Federal Transit Administration Contract Provisions*, which is attached hereto as Exhibit "A," for applicable requirements.

21. Liquidated Damages. Not applicable to this contract.

22. Infringement of Patents. Not applicable to this contract.

23. Rights in Data. Not applicable to this contract.

24. Indemnification. The Contractor shall, to the extent permitted by law protect, indemnify, defend, and hold MTD and its officers, employees and agents, including consultants, harmless from and against any and all liabilities, damages, claims, demands, liens, encumbrances, judgments, awards, losses, costs, expenses, and suits or actions or proceedings, including reasonable expenses, costs and attorneys' fees incurred by MTD and its officers, employees and agents, including consultants, in the defense, settlement or satisfaction thereof, for any injury, death, loss or damage to persons or property of any kind whatsoever, arising out of, or resulting from, the acts, errors or omissions of the Contractor, including acts, errors or omissions of its officers, employees, servants, agents, subcontractors and suppliers; and upon receipt of notice and if given authority, shall settle at its own expense or undertake at its own expense the defense of any such suit, action or proceeding, including appeals, against the MTD and its officers, employees and agents, including consultants, relating to such injury, death, loss or damage. Each party shall promptly notify the other in writing of the notice or assertion of any claim, demand, lien, encumbrance, judgment, award, suit, action or other proceeding hereunder. The Contractor shall have sole charge and direction of the defense of such suit, action or proceeding. The MTD shall not make any admission which might be materially prejudicial to the Contractor unless the Contractor has failed to take over the conduct of any negotiations or defense within a reasonable time after receipt of the notice and authority above provided. The MTD shall at the request of the Contractor furnish to the Contractor all reasonable assistance that may be necessary for the purpose of defending such suit, action or proceeding, and shall be repaid all reasonable costs incurred in doing so. The MTD shall have the right to be represented therein by advisory counsel of its own selection at its own expense. The obligations of the Contractor under this clause shall not extend to circumstances where the injury, or death, or damages is caused solely by the negligent acts, errors or omissions of the MTD, its officers, employees, agents or consultants, including negligence in the preparation of the Contract documents, or the giving of directions or instructions with respect to the requirements of the Contract by written order.

25. Notice. Notices in connection with this Agreement shall be made in writing and may be delivered either personally, by governmental postal service (regular, certified or registered), by private delivery service, or by electronic facsimile. Receipt shall be deemed to have occurred when actually made to the party or its designated agent. Such notices shall be properly addressed to the intended party as follows:

MTD:  
 Jerry Estrada, General Manager  
 Santa Barbara Metropolitan Transit District  
 550 Olive Street

CONTRACTOR:  
 [authorized official name & title]  
 [contractor name]  
 [contractor street address]

Santa Barbara, CA 93101  
E-Mail: [jestrada@sbmtd.gov](mailto:jestrada@sbmtd.gov)  
FAX: (805) 963-3365

[contractor city, state & zip]  
[contractor e-mail]  
[contract fax number]

26. Attorneys' Fees and Costs. In the event of a controversy (including, but not limited to arbitration or a criminal or civil filing in a Federal Court or a court of any of the United States) between the parties with respect to the enforcement or interpretation of this Agreement, the prevailing party in such controversy shall be entitled to receive, in addition to such other award as the court may deem appropriate, full reimbursement for its court costs and reasonable attorneys' fees incurred therein.

27. Negation of Partnership. This Agreement creates a relationship between two independent contractors and does not, nor may it be interpreted to, create the relationship of joint venturers, partners, employee/employer, or any other business relationship.

28. No Assignment. This Agreement is not assignable by either party, and any attempt by either party to assign its obligations hereunder shall be void ab initio at the election of the other party, which election may be made by written notice within ten (10) days of the non-assigning party's receipt of actual knowledge of such attempted assignment. Notwithstanding the foregoing, however, at the election of the other party, the obligations and burdens of a party shall bind and apply to any permitted successor in interest or assignee of the business and/or operations of a party.

29. Partial Invalidity. In the event that any portion of this Agreement or any provision hereof shall be deemed as invalid as contrary to applicable law, the balance of this Agreement shall be enforced according to its term, and that portion found unenforceable shall be interpreted and enforced to the extent that it may be within said applicable laws.

30. Disputes. This Agreement shall be construed and all disputes arising therefrom shall be settled in accordance with the laws of the State of California. Venue for any dispute arising under this Agreement shall be in Santa Barbara, California. Any controversy or claim arising out of or relating to this Agreement shall be resolved by binding arbitration before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then pertaining (available at [www.adr.org](http://www.adr.org)), except where those rules conflict with this provision, in which case this provision controls. Any court with jurisdiction shall enforce this clause and enter judgment on any award. The arbitrator shall be selected within twenty business days from commencement of the arbitration from the AAA's National Roster of Arbitrators pursuant to agreement or through selection procedures administered by the AAA. Within 45 days of initiation of arbitration, the Parties shall reach agreement upon and thereafter follow procedures, including reasonable limits on discovery, assuring that the arbitration will be concluded and the award rendered within no more than eight months from selection of the arbitrator or, failing agreement, procedures meeting such time limits will be designed by the AAA and adhered to by the Parties. The arbitration shall be held in Santa Barbara, California and the arbitrator shall apply the substantive law of California, except that the interpretation and enforcement of this arbitration provision shall be governed by the Federal Arbitration Act. Prior to commencement of arbitration, emergency relief is available from any court to avoid irreparable harm. THE ARBITRATOR SHALL NOT AWARD EITHER PARTY PUNITIVE, EXEMPLARY, MULTIPLIED OR CONSEQUENTIAL DAMAGES. Prior to commencement of arbitration, however, the Parties must attempt to mediate their dispute using a professional mediator from AAA, the CPR Institute for Dispute Resolution, or like organization selected by agreement or, absent agreement, through selection procedures administered by the AAA. Within a period of 45 days after the request for mediation, the Parties agree to convene with the mediator, with business representatives present, for at least one session to attempt to resolve the matter. In no event will mediation delay commencement of the arbitration for more than 45 days absent agreement of the Parties or interfere with the availability of emergency relief.

31. Prohibited Interest. The parties hereto covenant and agree that to their knowledge no board member, officer, or employee of MTD, during his/her tenure or for one year thereafter, has any interest, whether contractual, non contractual, financial or otherwise, in this transaction, or in the business of a contracting party other than MTD. If any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other parties, even if such interest would not be considered a conflict of interest under Article 4, Chapter 1, Divisions 4 and 4.5, Title I of the Government Code of the State of California.

32. Compliance with Laws and Regulations. Contractor shall warrant that in the performance of work under contract to MTD that they shall comply with all applicable federal, state and local laws and ordinances, and all lawful orders, rules, and regulations thereunder.

33. Audit and Inspection of Records. The Contractor shall agree that all materials supplied and services performed under the Project, facilities used in connection therewith, and records and documentation thereunto appertaining shall be subject to inspection, test, or audit by duly authorized representatives of MTD and the State of California. The Contractor agrees to maintain all required records relating to the Project for at least three years after MTD makes final payment and all other pending matters are closed.

34. Equal Employment Opportunity. See Paragraph 24 (Civil Rights Requirements) in *Federal Transit Administration Contract Provisions*, which is attached hereto as Exhibit "A," for applicable requirements.

35. Entire Agreement. This Agreement and its attached exhibits constitute the entire agreement between the parties and shall be deemed to supersede and cancel any and all previous representations, understandings, or agreements between MTD and Contractor as to the subject matter hereof. This Agreement may only be amended by an instrument in writing signed by the parties.

36. No Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.

37. Counterparts: Facsimile/E-mail. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a facsimile or scanned and e-mailed signature may substitute for and have the same legal effect as the original signature.

38. Qualifications. Contractor or Contractor's representative (Contractor) certifies that Contractor is qualified to do business and is in good standing in the State of California, and that Contractor has authority to enter into and perform its obligations under this Agreement, which constitutes a valid and binding obligation of Contractor.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed.

SANTA BARBARA MTD

[contractor name in caps]

\_\_\_\_\_  
Jerry Estrada, General Manager

\_\_\_\_\_  
[authorized official name & title]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# FEDERAL TRANSIT ADMINISTRATION

## CONTRACT PROVISIONS

*Diesel Fuel - [Contractor Name]*

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1. **FLY AMERICA REQUIREMENTS--NOT APPLICABLE TO THIS CONTRACT.**
2. **BUY AMERICA REQUIREMENTS--NOT APPLICABLE TO THIS CONTRACT.**
3. **CHARTER BUS & SCHOOL BUS REQUIREMENTS--NOT APPLICABLE TO THIS CONTRACT.**
4. **CARGO PREFERENCE REQUIREMENTS--NOT APPLICABLE TO THIS CONTRACT.**
5. **SEISMIC SAFETY REQUIREMENTS--NOT APPLICABLE TO THIS CONTRACT.**
6. **ENERGY CONSERVATION REQUIREMENTS**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. The Contractor agrees to include the requirements of this section in all subcontracts.

#### 7. **CLEAN WATER REQUIREMENTS**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000.

8. **BUS TESTING--NOT APPLICABLE TO THIS CONTRACT.**
9. **PRE-AWARD & POST-DELIVERY AUDIT REQUIREMENTS--NOT APPLICABLE TO THIS CONTRACT.**

#### 10. **LOBBYING**

The Contractor certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (b) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(c) The Contractor shall require that the language of this certification be included in the award documents for all subawards exceeding \$100,000 at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000

and not more than \$100,000 for each such failure. [Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.] Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure.

[Note: The Contractor shall have previously submitted to MTD a separately signed Lobbying Certification containing the above language for itself and any subcontracts exceeding \$100,000 as a condition of contract award.]

## 11. ACCESS TO RECORDS & REPORTS

(a) The Contractor agrees to provide MTD, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(b) If contract is for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to MTD, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

(c) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(d) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until MTD, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

## 12. FEDERAL CHANGES

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between MTD and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## 13. BONDING REQUIREMENTS--NOT APPLICABLE TO THIS CONTRACT.

## 14. CLEAN AIR

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**15. RECYCLED PRODUCTS--NOT APPLICABLE TO THIS CONTRACT.****16. DAVIS-BACON & COPELAND ANTI-KICKBACK ACTS--NOT APPLICABLE TO THIS CONTRACT.****17. CONTRACT WORK HOURS & SAFETY STANDARDS ACT--NOT APPLICABLE TO THIS CONTRACT.****18. [RESERVED]****19. NO GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

(a) MTD and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to MTD, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**20. PROGRAM FRAUD & FALSE OR FRAUDULENT STATEMENTS & RELATED ACTS**

a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**21. TERMINATION**

(a) Termination for Convenience: MTD, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, MTD shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(b) Termination for Default

(1) If the Contractor fails to perform the services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, MTD may terminate this contract for default. MTD shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

(2) If this contract is terminated while the Contractor has possession of MTD goods, the Contractor shall, upon direction of MTD, protect and preserve the goods until surrendered to MTD or its agent. The Contractor and MTD shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

(3) If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of parties shall be the same as if the termination had been issued for the convenience of MTD.

## 22. GOVERNMENT-WIDE DEBARMENT & SUSPENSION

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by MTD. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to MTD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## 23. PRIVACY ACT--NOT APPLICABLE TO THIS CONTRACT.

## 24. CIVIL RIGHTS REQUIREMENTS

(a) Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity: The following equal employment opportunity requirements apply to the underlying contract:

(1) Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Age: In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to

refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **25. BREACHES & DISPUTE RESOLUTION**

Paragraph 30 of the *MTD Master Agreement* regarding disputes shall be deemed satisfactory to meet the federal requirements for dispute resolution. The Contractor agrees to include the requirements of said Paragraph 30 in all subcontracts.

## **26. PATENT & RIGHTS IN DATA--NOT APPLICABLE TO THIS CONTRACT.**

## **27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS--NOT APPLICABLE TO THIS CONTRACT.**

## **28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

(a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. MTD's overall goal for DBE participation is 1.2%. A separate contract goal has not been established for this procurement.

(b) The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as MTD deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

(c) The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

(d) The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the MTD. In addition, the Contractor may not hold retainage from its subcontractors.]

(e) Contractor must promptly notify MTD whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of MTD.

## **29. [RESERVED]**

## **30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a

conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MTD requests which would cause MTD to be in violation of the FTA terms and conditions. The Contractor agrees to include the requirements of this section in all subcontracts.

**31. DRUG & ALCOHOL TESTING--NOT APPLICABLE TO THIS CONTRACT.**

**32. INTELLIGENT TRANSPORTATION SYSTEM (ITS) --NOT APPLICABLE TO THIS CONTRACT.**