

**Invitation for Bids for Blended Biodiesel Fuel*****SOLICITATION INSTRUCTIONS*****Solicitation Summary Sheet**

**Solicitation Name:** Blended Biodiesel Fuel

**Solicitation Issuance Date:** Tuesday, April 7, 2009 (revised April 27, 2009)

**Solicitation Description:** Supply of approximately 630,000 gallons of CARB ULSD blended with biodiesel up to a maximum of 20% (i.e., B20) to on-site 20,000 gallon UST through periodic truck delivery over one-year period.

**Delivery/UST Location:** 550 Olive Street, Santa Barbara, CA 93101

**Pre-Bid Meeting Date/Time:** none

**Pre-Bid Meeting Location:** not applicable

**Bid Due Date/Time:** Wednesday, May 6, 2009 at 11:00 AM (local time)

**Bid Submittal Location:** 550 Olive Street, Santa Barbara, CA 93101

**Include with Bid:** See page 2 of *Solicitation Instructions* (**bids submitted without required items are non-responsive & may be rejected**).

**Contract Award Date:** Thursday, May 7, 2009 by 11:00 AM (local time)

**Contract Period:** One-Year Period from June 2009 – May 2010 (projected)

**Solicitation Contact:** Brad Davis, Assistant Controller, (805) 883-4201, bdavis@sbmtd.gov

**Type of Contract:** Indefinite Quantity; combination Firm Fixed Price and Indexed Price

**Bonding Required:** none

**Solicitation Cost Estimate:** none provided

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**

**Invitation for Bids for Blended Biodiesel Fuel**

***SOLICITATION INSTRUCTIONS***

**Table of Contents**

1. PROJECT DESCRIPTION ..... 1

2. PRE-BID SUBMITTAL ACTIVITIES ..... 1

    2.1 Bid Package Contents ..... 1

    2.2 Pre-Bid Meeting ..... 1

    2.3 Communications, Requests & Clarifications ..... 1

    2.4 IFB Modifications & Addenda..... 2

3. BID PREPARATION & SUBMITTAL ..... 2

    3.1 Bid Contents ..... 2

    3.2 Bidder-Prepared Documents ..... 2

    3.3 MTD Forms & Certifications ..... 3

    3.4 Bid Submission & Opening ..... 4

    3.5 Modification or Withdrawal of Bids ..... 4

    3.6 Limitations ..... 4

4. REVIEW & AWARD ..... 5

    4.1 Bid Deviations & Collusion ..... 5

    4.2 Responsiveness ..... 5

    4.3 Responsibility ..... 5

    4.4 Single Bid Analysis ..... 5

    4.5 Contract Award ..... 5

    4.6 Contract Execution ..... 6

5. PROTEST PROCEDURES ..... 6

6. SOLICITATION SCHEDULE ..... 6

7. LIST OF ATTACHMENTS ..... 6

    7.1 IFB Process & Instructions Attachments ..... 6

    7.2 Contract Document Attachments ..... 6

# ***SANTA BARBARA METROPOLITAN TRANSIT DISTRICT***

## **Invitation for Bids for Blended Biodiesel Fuel**

### ***SOLICITATION INSTRUCTIONS***

#### **1. PROJECT DESCRIPTION**

The Santa Barbara Metropolitan Transit District (MTD) is issuing this *Invitation for Bids (IFB) for Blended Biodiesel Fuel* in order to secure the purchase and delivery of biodiesel fuel to its on-site underground storage tank (UST) for usage by its fleet of public transit buses powered by diesel engines (the "project"). Specifically, MTD is seeking bids to supply, sell and deliver to MTD "CARB" ultra-low sulfur diesel (ULSD) fuel blended with B100 biodiesel up to a maximum of 20% by volume on an "as needed" basis with an expected annual volume of 630,000 U.S. gallons. Fuel shall be provided in the industry standard load size of approximately 7,500 gallons within 48 business weekday hours of order by MTD. Based upon MTD's single 20,000 gallon UST and restriction of delivery to non-holiday weekdays, delivery loads will be required approximately every three weekdays. All fuel delivered to MTD shall meet or exceed applicable government agency and ASTM standards in effect at the time of delivery. It is MTD's intention to award a contract to the responsive and responsible party submitting the lowest price bid.

#### **2. PRE-BID SUBMITTAL ACTIVITIES**

##### **2.1 BID PACKAGE CONTENTS**

These *IFB Process & Instructions* provides directions on preparing bids and describes the bid review and contract award process. Attached to it are various required forms and certifications to be completed and included within the bidder's bid submittal. Detailed work specifications are contained in the *Statement of Work*. Additional contractual conditions are included in the *MTD Master Agreement* and the *FTA Contract Provisions*. All such documents, listed below, are contained in this Invitation for Bids package:

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

Bidders should be certain to read all documents in the IFB package and follow directions as specified. Failure of a bidder to follow instructions may result in rejection or disqualification of its bid.

##### **2.2 PRE-BID MEETING**

There is no pre-bid meeting for this solicitations.

##### **2.3 COMMUNICATIONS, REQUESTS & CLARIFICATIONS**

Communications concerning this solicitation shall be directed to Brad Davis, Assistant Controller, or his designated representative. Unless authorized by Mr. Davis, bidders and their representatives should not make any contact with or communicate with any other member or employee of MTD in regard to this solicitation.

At any time during this solicitation up to the bid due date, bidders may request a clarification, interpretation or change to any aspect or requirement of the IFB or any addenda thereto. Requests may include suggested substitutes for specified items and for any brand names which, whenever used in this solicitation, shall mean the

brand name or approved equal. For serious consideration, any request for a change should be well in advance of the bid due date and supported with technical data, test results, or other pertinent information evidencing that the exception will result in a condition equal to or better than that required by the IFB without a substantial increase in project cost or time.

To be considered, clarifications and requests must be made via the *Request for Clarification, Change or Approved Equal* form included as an attachment to these instructions; MTD will not respond to oral requests. Delivery of the form to Mr. Davis may be accomplished through any of four methods:

Hand: 550 Olive Street, Santa Barbara, CA

Fax: (805) 963-3365

Mail: 550 Olive Street, Santa Barbara, CA 93101

E-Mail: [bdavis@sbmtd.gov](mailto:bdavis@sbmtd.gov)

## **2.4 IFB MODIFICATIONS & ADDENDA**

MTD reserves the right to amend the IFB at any time. Based upon any questions, requests, or comments received, MTD may modify the IFB if in its best interests to do so. Any such changes shall be provided in the form of written addenda and any other forms of communication with any officer, employee or agent of MTD shall not be binding on MTD. Any issued addenda to the IFB will be posted to the Procurements page of MTD's website at [www.sbmtd.gov/currentprocurements.htm](http://www.sbmtd.gov/currentprocurements.htm) and an e-mail announcing its availability will be concurrently sent 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 proposal or under the IFB as clarified or modified. Failure to acknowledge receipt of addenda may disqualify the bid.

## **3. BID PREPARATION & SUBMITTAL**

### **3.1 BID CONTENTS**

The bid to be provided under this IFB is generally composed of two types of information: bidder-prepared documents; and bidder-completed forms provided by MTD. The former include the following:

- Description of the Firm
- Description of Subcontractors or Suppliers
- Prior Experience with Similar Projects
- Certificate of Liability Insurance
- BQ-9000 Producer or Marketer Certification
- CARB Alternative Diesel Formulation Certification (if applicable)

Forms that are provided herein that must be completed by the bidder and submitted as part of its bid include:

- Price Bid
- Acknowledgement of Addenda (if any addenda issued)
- Bidder Information
- References, Suppliers & Subcontractors
- Lobbying Certification

To allow a quick award turnaround, it is critical that bidders provide all required information in their bids and fully and accurately complete the required forms.

### **3.2 BIDDER-PREPARED DOCUMENTS**

Description of the Firm—Bids shall include a brief description of the bidding firm including its line(s) of business, size, location(s), years in business, and any other information deemed appropriate for providing a

general overall picture of the firm. 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 a maximum of two pages.

Description of Subcontractors or Suppliers—Bids shall include a description of all significant subcontractors or suppliers. Provide the same information as that described above for the bidding firm. At a minimum, this must include the anticipated ULSD and B100 producers, BQ-9000 certified firm, and fuel delivery firm. Please limit information to a maximum of one page for each entity.

Certificate of Liability Insurance—Bids shall include a Certificate of Liability Insurance form or its equivalent prepared by the Bidder's insurance agent or broker showing its evidence of insurance coverage. Such form must indicate that the Bidder meets the minimum coverage stipulated in paragraph 18 of the MTD Master Agreement. (If awarded the contract for the project, the Bidder shall be required at that time to name MTD as an additionally insured for appropriate policies.)

BQ-9000 Producer or Marketer Certification—Bids shall include a copy of the BQ-9000 Producer or Marketer for the relevant firm(s). The *Statement of Work* specifies that the B100 shall 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.

CARB Alternative Diesel Formulation Certification (if applicable)—If the ULSD fuel to be provided under the bid does not comply with CARB requirements but has been approved by CARB as an alternative diesel fuel formulation, Bids shall include a copy of the applicable CARB certification.

### 3.3 MTD FORMS & CERTIFICATIONS

Price Bid—Bids shall include the fully completed Price Bid form included in this IFB showing the total estimated compensation for carrying out the project under the terms of the one-year contract. MTD is requiring that bidders submit pricing based on a fixed ULSD price per gallon and a floating B99 biodiesel price per gallon, with the latter calculated as a fixed margin (premium or discount) to an OPIS biodiesel benchmark. The *Price Bid* form also includes a pricing option based on floating prices for both the ULSD and the B99, each with their own separate margin to separate OPIS benchmarks. However, given MTD's preference for a fixed price for budgeting purposes, failure to provide a fixed ULSD price on the bid form will render the bid non-responsive and will result in its rejection.

The specific index that will be used on the *Price Bid* form (and for contract invoices) for the floating B99 biodiesel price is the *Biodiesel B100 West* index listed under the *Key Renewable Fuels Regional Averages* that is reported weekly in the OPIS *Ethanol & Biodiesel Information Service* newsletter. The specific index that will be used on the *Price Bid* form (and for contract invoices) for the optional floating CARB diesel price is the OPIS *Daily Gross Contract Average Rack Price for Los Angeles No. 2 CARB ULS* (note that this is the benchmark issued each weekday at 9:59 AM eastern time, not the "closing" price issued at 5:59 PM).

The applicable index prices issued by OPIS on Monday, May 4, 2009, shall be used for costing out bids and determining the low bidder. In comparing fixed ULSD prices to the optional floating prices during bid evaluation, MTD will estimate the floating price using the average of the NYMEX heating oil futures closing prices on Monday, May 4, 2009, for June 2009 to May 2010.

MTD, as a public transit bus operator, is exempt from both the State of California Diesel Fuel Tax of \$0.18 per gallon; and the Federal Excise Tax on Diesel Fuel of \$0.244 per gallon. Bidders shall be certain to include these exemptions, as well as all applicable biodiesel-associated credits, into account in establishing their bid price.

Acknowledgement of Addenda—Bidders shall acknowledge the receipt of each individual addendum in their proposals by including the fully completed *Acknowledgement of Addenda* form included in this IFB. Failure of a bidder to receive any addendum shall not relieve it from any obligation under its proposal or under the IFB as clarified or modified. Failure to acknowledge receipt of addenda may disqualify the bid.

Bidder Information—Bids shall include the fully completed *Bidder Information* form included in this IFB.

References, Suppliers & Subcontractors—Bids shall include the fully completed *References, Suppliers & Subcontractors* form included in this solicitation. Please be certain to list appropriate and current contact names and phone numbers for all parties.

Lobbying Certification—Because this is a federally funded project that will result in a total contract amount exceeding \$100,000, the FTA requires bidders to complete, sign and include within their bid the *Lobbying Certification* form included as an attachment to these instructions. Essentially, signing this certification means that the bidder/contractor agrees not to use federal funds to influence federal officials; and that if non-federal funds are used for the lobbying of federal officials, the stipulated form describing such activities will be submitted to MTD. Note that the *FTA Contract Provisions for Federal Fiscal Year 08/09* included in this solicitation (and any contracting resulting therefrom) includes additional lobbying-related contract language.

### **3.4 BID SUBMISSION & OPENING**

One (1) original and two (2) complete copies of each bid shall be submitted in a non-transparent, sealed envelope or appropriate packaging plainly marked on the exterior with the name of the bidder and the following: "Blended Biodiesel Fuel Bid" If using a delivery service, bids must still be enclosed in the specified packaging within the delivery service packaging. These requirements also apply to any bid modifications (described in the next section). Bids shall be delivered to: Santa Barbara Metropolitan Transit District, Attn: Brad Davis, 550 Olive Street, Santa Barbara, CA 93101

Bids will be accepted until 11 AM, local time, on Wednesday, May 6, 2009. Bids received after that time shall not be accepted and will be returned unopened to the sender. All bids received by the bid submission deadline will be opened and read aloud at an open public meeting immediately following the bid submission deadline.

### **3.5 MODIFICATION OR WITHDRAWAL OF BIDS**

A bidder may modify or withdraw a submitted bid anytime prior to the bid submission deadline. Modifications shall be submitted in writing in the same form and manner as the original bid. A bidder may withdraw a bid already received by MTD prior to the bid due date/time by submitting to MTD a written request for such withdrawal executed by the bidder's authorized representative. After the bid submission deadline, a bid may be withdrawn only if MTD fails to award the Contract within the validity period stipulated on the *Price Bid* form or any agreed upon extension thereof. The withdrawal of a bid prior to the bid submission deadline does not prejudice the right of a bidder to resubmit a bid by the deadline.

### **3.6 LIMITATIONS**

The following limitations apply to this solicitation:

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

## **4. REVIEW & AWARD**

### **4.1 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.

### **4.2 RESPONSIVENESS**

MTD shall examine the low bid for the purpose of ascertaining its completeness and responsiveness to the provisions of this solicitation. Such process may involve requesting additional or clarifying information from the bidder. Bids that do not contain all required materials, information or forms; or where such materials, information or forms are substantially incomplete may be considered non-responsive and rejected by MTD. In such case, MTD shall notify the bidder in writing of its rejection and the basis thereof. This process shall continue until such time as the low responsive bidder is determined.

### **4.3 RESPONSIBILITY**

MTD shall make an assessment of the low responsive bidder's "responsibility." For purposes of this solicitation, responsibility is defined as evidence of adequate financial and technical capacity to undertake the project; and satisfactory performance in previous contracts. MTD shall primarily use the references and insurance information in the bid for this initial determination. However, MTD may at its own discretion seek and utilize other information within and outside of the bid to assist in the determination. Such process may involve requesting additional or clarifying information from a bidder. The bid of any bidder not found to be responsible shall be rejected. In such case, MTD shall notify the bidder in writing of its rejection and the basis thereof. This process shall continue until such time as the low responsive and responsible bidder is determined.

### **4.4 SINGLE BID ANALYSIS**

If only one bid is received in response to this solicitation, a detailed price and/or cost analysis of the bid may be required in order to determine if the price is fair and reasonable. A price analysis involves comparison to other similar procurements with similar quantities, specifications and time frames. Where it is impossible to determine price reasonableness through price analysis, it may be necessary to conduct a cost analysis of the proposed price. A cost analysis is a more detailed evaluation of the cost elements in the bidder's proposal. It is conducted to form an opinion as to the degree to which the proposed costs represent what the bidder's performance should cost. A cost analysis is generally conducted to determine whether the bidder is applying sound management in proposing the application of resources to the contracted effort and whether costs are allowable, allocable and reasonable. Any such analyses and the results therefrom shall not obligate MTD to accept such a single bid, which may be rejected at MTD's sole discretion.

### **4.5 CONTRACT AWARD**

To enable the winning bidder to quickly lock in their ULSD price if MTD determines that a fixed price bid is more advantageous than a floating price bid, MTD will make every effort to award the contract within 24 hours of bid opening. If considered in MTD's best interest, the MTD General Manager will award a contract to the responsive and responsible bidder that has submitted the lowest price bid.

## 4.6 CONTRACT EXECUTION

The contract will be executed as soon as practical after contract award and receipt of any required bidder bonding, insurance or other documents. The contract shall be composed of the *MTD Master Agreement*, the *FTA Contract Provisions for Federal Fiscal Year 08/09*, 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.

## 5. 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. The MTD Procurement Officer is responsible for the conduct and administration of procurement protests pursuant to the procedures established in the MTD Procurement Manual. Procurements involving FTA funds are subject to additional protest procedures established by that agency. A copy of MTD's Procurement Protest Procedures are included as an attachment.

## 6. SOLICITATION SCHEDULE

The following schedule has been established for this solicitation. MTD reserves the right to modify this schedule if it is in its best interests to do so. If modified, MTD shall provide e-mail notice of such to all parties known to have received copies of the solicitation.

<u>ACTIVITY</u>	<u>DATE (TIME)</u>
IFB Public Notice/Issuance	Tuesday, April 7, 2009
Bid Deadline & Public Opening (at MTD Administrative Office, 550 Olive Street, Santa Barbara, CA 93101)	Wednesday, May 6, 2009 (11:00 AM local time)
Contract Award	Thursday, May 7, 2009 (by 11:00 AM local time)
Project Implementation Period	June 2009 – May 2010

## 7. LIST OF ATTACHMENTS

### 7.1 IFB PROCESS & INSTRUCTIONS ATTACHMENTS

Attached directly hereto and part of these *Solicitation Instructions* are forms and certifications associated with preparing and submitting bids. Note that the first form, *Request for Clarification, Change or Approved Equal*, is to be used prior to bid submittals. All other forms and certifications should be included as part of the bid.

- *Request for Clarification, Change or Approved Equal* (form)
- *Price Bid* (form)
- *Acknowledgement of Addenda* (form) [if any addenda issued]
- *Bidder Information* (form)
- *References, Suppliers & Subcontractors* (form)
- *Lobbying Certification*
- *MTD Protest Procedures*

### 7.2 CONTRACT DOCUMENT ATTACHMENTS

The following documents are included in this IFB package as separate attachments. These documents should be consulted and adhered to in preparing bids and are integral parts of any contract resulting from this solicitation.

- *Blended Biodiesel Fuel: Statement of Work*
- *Blended Biodiesel Fuel: MTD Master Agreement*
- *FTA Contract Provisions for Federal Fiscal Year 08/09*



**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**

**Invitation for Bids for Blended Biodiesel Fuel**

**PRICE BID**

<b>Fixed CARB ULSD Price &amp; Floating B99 Biodiesel Price</b>		
CARB Ultra-Low Sulfur Diesel Fixed Price Per Gallon		
OPIS Key Renewable Fuels Regional Averages for West Biodiesel B100 (for May 4, 2009)		tbd
Federal Blender's Tax Credit		(1.00)
OPIS West Biodiesel B100 Index Price Net of Blender's Tax Credit		
Margin (Premium or Discount) to OPIS West Biodiesel Price for B99 Biodiesel		
Fuel Transportation & Delivery Fee Per Gallon		
<b>Estimated Dollar Value of One-Year Contract</b>		
Estimated ULSD Consumption in Gallons (85% of 630,000) and Resulting ULSD Cost	535,500	
Estimated B100 Consumption [B5 for 4 months & B20 for 8 months = B15] (15% of 630,000)	94,500	
Estimated Fuel Delivery Fee (cost not subject to sales tax)	630,000	
State & Federal Environmental Fees Per Gallon	\$0.00339	
Santa Barbara County Sales Tax	8.75%	
Total Estimated Contract Value at Current OPIS Price		

<b>Floating CARB ULSD Price Option</b>		
OPIS Gross Daily Contract Rack Price for Los Angeles No. 2 CARB ULS Diesel (for May 4, 2009)		tbd
Premium (or Discount) to above OPIS Price for CARB Ultra-Low Sulfur Diesel		
<b>Estimated Dollar Value of One-Year Contract</b>		
Estimated ULSD Consumption (85% of 630,000)	535,500	
Estimated B100 Consumption [B5 for 4 months & B20 for 8 months = B15] (15% of 630,000)	94,500	
Estimated Fuel Delivery Fee (cost not subject to sales tax)	630,000	
State & Federal Environmental Fees Per Gallon	\$0.00339	
Santa Barbara County Sales Tax	8.75%	
Total Estimated Contract Value at Current OPIS Price		

The Bidder hereby represents and warrants that:

1. Its price bid reflects: that MTD is exempt from the State of California Diesel Fuel Tax of \$0.18 per gallon and the Federal Excise Tax on Diesel Fuel of \$0.244 per gallon; and all available biodiesel fuel credits.
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, including this Price Bid, is valid for 24 hours following the bid due date and time.

\_\_\_\_\_  
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 Blended Biodiesel Fuel**

***ACKNOWLEDGEMENT OF ADDENDA***

The undersigned acknowledges the Bidder's receipt of the following addenda to this *Invitation for Bids for Blended Biodiesel Fuel* and has incorporated information or changes in said addenda within its bid.

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)



**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**

**Invitation for Bids for Blended Biodiesel Fuel**

***REFERENCES, SUPPLIERS & SUBCONTRACTORS***

Business Name: \_\_\_\_\_

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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 recent clients for which you provided **similar services** to the project work:

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

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

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

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***Suppliers & Subcontractors***

Provide the following information for **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 Blended Biodiesel 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 subawards 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.

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**  
**PROCUREMENT PROTEST PROCEDURES <sup>1</sup>**

**Revised November 1, 2008**

**9.1 PURPOSE AND APPLICABILITY**

The procedures described in this section have been established to ensure uniform, timely, and equitable consideration of all complaints received by MTD concerning its procurement activities. The Procurement Officer shall be responsible for the conduct and administration of procurement protests pursuant to the procedures established in this Section and Section 7.0 of [the MTD Procurement Manual]. The following protest procedures shall be employed for procurements conducted by MTD. Such protests shall be applicable only to procurements wherein MTD requests bids, proposals or offers for goods or services financed in whole or in part by public funds. Procurements involving FTA funds are subject to additional protest procedures established by that agency. Procedures applicable to FTA funded procurements are so identified.

**9.2 DEFINITIONS**

The following definitions apply to terms used in this section:

Days: Unless otherwise specified, refers to MTD working days.

File or Submit: Refers to the date of receipt by MTD.

Interested Party: All bidders or proposers involved in an MTD procurement. This may also include a subcontractor or supplier who shows substantial economic interest in a provision of the IFB or RFP, or in the interpretation of such provision.

Bid: Refers to and includes: i) the terms “offer” and “proposal” as employed in this document; ii) sealed bids; iii) competitive negotiation, and; iv) non-competitive negotiation.

**9.3 BASES FOR PROTEST**

If in the course of a procurement action an interested party has reason to believe that: a) free and open competition does not exist, or; b) MTD solicitation documents contain restrictive specifications, such party may file a protest in accordance with the procedures described herein.

In addition to the above, protests may be filed based upon the following factual or alleged circumstances:

- (a) Violation of federal, state or local law or regulation;
- (b) Sole source procurements;
- (c) Award made to other than the low bidder;
- (d) Failure to adhere to evaluation criteria set forth in solicitation documents, or use of additional criteria not so published;
- (e) Changes to evaluation criteria made during the evaluation process;
- (f) Local or DBE preferences;

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<sup>1</sup> Excerpted from Chapter 9 of the MTD *Procurement Manual* as revised in March 2003 and amended in April 2003.

- (g) Solicitation advertising violating applicable laws or regulations;
- (h) Conduct of negotiations after bid opening in sealed bid procurements;
- (i) Provision of inadequate time to prepare a bid or proposal.

Protests of MTD procurements filed by interested parties shall be considered in two general categories: 1) those filed prior to award, and; 2) protests occurring after award has been made.

#### **9.4 PRE-AWARD PROTESTS**

The following procedures shall be followed for all protests filed prior to award:

1. Protests must be filed no later than ten (10) days prior to the date established in the solicitation for receipt of bids or proposals.
2. Protests must be submitted in writing to the attention of the Procurement Officer. The written protests shall include:
  - (a) The name, address, and telephone number of the protestor;
  - (b) The MTD solicitation number and project description;
  - (c) A statement of the grounds for the protest, accompanied by all supporting documentation. All grounds must be fully supported with documentation;
  - (d) The resolution sought from MTD by the protestor.
3. The Procurement Officer shall receive the protest and issue written notification to the protestor within five days that the matter is undergoing review. Notice of the protest shall be given in writing to all known recipients of solicitation documents.
4. Procurement activity shall be suspended pending resolution of a protest unless one or more of the following conditions exists:
  - (a) The goods or services being procured are urgently required;
  - (b) Delivery or performance will be unduly delayed by failure to make an award promptly;
  - (c) Failure to make prompt award will result in termination of a critical MTD function or activity or otherwise cause undue harm to the District, or;
  - (d) The General Manager prepares a written finding that such protest is clearly frivolous in nature, and therefore does not warrant a disruption of the procurement process.

The Procurement Officer shall be responsible for making a written determination that circumstances require MTD to proceed with a procurement during a pending protest. Unless such determination is made the procurement shall be suspended pending resolution of the protest. All parties known to have received solicitation documents shall be notified in writing of such suspension by the Procurement Officer.

5. All protests received within the specified period shall be examined by the Procurement Officer who shall evaluate the matter and, within five (5) days, forward a recommendation concerning its disposition to the General Manager. No additional material shall be accepted for consideration during the protest review unless specifically requested in writing by MTD.
6. The General Manager may attempt to resolve the protest with the affected party. If: a) within five (5) days after receipt of recommendations from the Procurement Officer the General Manager elects not to attempt such resolution, or; b) if resolution is attempted but not achieved within twenty (20) days after

receipt of the aforementioned recommendations, the General Manager shall forward the matter to the MTD Board of Directors (hereinafter “Board”) for resolution. For these purposes “resolution” shall mean the written withdrawal of a protest by the originating party.

7. The MTD Board shall formally consider the protests at a public meeting within fourteen (14) calendar days after the date on which the matter is forwarded by the General Manager. Protesting parties shall be notified in writing of the date on which their matters shall be considered by the MTD Board. Such parties shall be afforded an opportunity to present their case at the Board meeting.

8. The MTD Board shall then make a formal decision on such protests at a public meeting. The decision of the Board, along with a formal record of the protest, shall become a matter of public record, and shall be considered final. The Procurement Officer shall notify protesting parties in writing of any protest decision made by the Board. Except under conditions described in #4 above, such decision by the MTD Board shall be made prior to award of any contract related to the subject procurement.

9. Should the Board deny the protest, MTD shall proceed with the procurement process. In the case of FTA funded procurements no contract shall be awarded within five (5) days following the Board’s decision unless such award is necessary due to circumstances described in #4 above. If the decision of the Board is to uphold the protest, then MTD shall proceed pursuant to Board direction.

## 9.5 POST-AWARD PROTESTS

Protests received after award of contract shall be considered only if received within five (5) days following the date on which such award is made. Post-award protests received after that time shall not be considered. Post-award protests shall be processed in the same fashion as that employed for pre-award protests. However, the award shall remain valid and procurement activities shall continue unless the General Manager determines in writing that suspension of such award is necessary pending protest resolution. In that event the awardee shall be so notified in writing, and the Procurement Officer shall effect an agreement with the Contractor for suspension of activity.

## 9.6 FTA PROTEST REVIEW PROCEDURES <sup>2</sup>

The FTA has developed an appeals process for reviewing protests of MTD’s procurement decisions.

1. Requirements for the Protester. The protester must:

- (a) Qualify as an “Interested Party.” Only an “interested party” qualifies for the FTA review of its appeal. An “interested party” is a party that is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the third party contract at issue.
  - (1) Subcontractors. A subcontractor does not qualify as an “interested party” because it does not have a direct economic interest in the results of the procurement.
  - (2) Consortia/Joint Ventures/Partnerships/Teams. An established consortium, joint venture, partnership, or team that is an actual bidder or offeror and is acting in its entirety, would qualify as an “interested party” because it has a direct economic interest in the results of the procurement. An individual member of a consortium, joint venture, partnership, or

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<sup>2</sup> Excerpted from Chapter VII of Federal Transit Administration Circular 4220.1F *Third Party Contracting Guidance* issued November 1, 2008.

team, acting solely in its individual capacity, does not qualify as an “interested party” because it does not have a direct economic interest in the results of the procurement.

(3) Associations or Organizations. An association or organization that does not perform contracts does not qualify as an “interested party,” because it does not have a direct economic interest in the results of the procurement.

(b) Exhaust Administrative Remedies. The protester must exhaust its administrative remedies by pursuing MTD’s protest procedures to completion before appealing the recipient’s decision to the FTA.

(c) Appeal Within Five Days. The protester must deliver its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has received actual or constructive notice of MTD’s final decision. Likewise, the protester must provide its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has identified other grounds for appeal to the FTA. For example, other grounds for appeal include MTD’s failure to have or failure to comply with its protest procedures or failure to review the protest.

2. Extent of FTA Review. As provided in the Common Grant Rule for governmental recipients, the FTA will limit its review of third party contract protests as follows:

(a) MTD’s Procedural Failures. The FTA will consider a protest if MTD:

- (1) Does not have protest procedures, or
- (2) Has not complied with its protest procedures, or
- (3) Has not reviewed the protest when presented an opportunity to do so.

(b) Violations of Federal Law or Regulations. The FTA will not consider every appeal filed by a protestor of MTD’s protest decision merely because a Federal law or regulation may be involved. Instead, the FTA will exercise discretionary jurisdiction over those appeals involving issues important to the FTA’s overall public transportation program. The FTA will refer violations of Federal law for which it does not have primary jurisdiction to the Federal authority having proper jurisdiction.

(c) Violations of State or Local Law or Regulations. The FTA will refer violations of State or local law to the State or local authority having proper jurisdiction.

3. FTA Determinations to Decline Protest Reviews. The FTA’s determination to decline jurisdiction over a protest does not mean that FTA approves of or agrees with MTD’s decision or that the FTA has determined the contract is eligible for Federal participation. The FTA’s determination means only that the FTA does not consider the issues presented to be sufficiently important to the FTA’s overall program that the FTA considers a review to be required.



# ***Blended Biodiesel Fuel***

## ***Statement of Work***

***Version 2.0***  
***Issued April 27, 2009***

**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**

***Blended Biodiesel Fuel  
Statement of Work***

**TABLE OF CONTENTS**

**1.0 PROJECT SUMMARY & GENERAL REQUIREMENTS..... 1**

**1.1 PROJECT SUMMARY .....1**

**1.2 LIMITATIONS OF STATEMENT OF WORK.....1**

**1.3 REFERENCE DOCUMENTS .....1**

**2.0 TECHNICAL SPECIFICATIONS..... 2**

**2.1 DIESEL GRADE & BIODIESEL BLEND.....2**

**2.2 COMPLIANCE WITH ASTM STANDARD SPECIFICATIONS.....2**

**2.3 COLD WEATHER OPERABILITY .....2**

**2.4 ULTRA-LOW SULFUR DIESEL.....2**

        2.4.1 COMPLIANCE WITH CARB REQUIREMENTS.....2

        2.4.2 COMPLIANCE WITH ENGINE MANUFACTURER REQUIREMENTS .....2

**2.5 BIODIESEL & BLENDING .....3**

        2.5.1 B100 REQUIREMENTS.....3

        2.5.2 FEEDSTOCK .....3

        2.5.3 BLENDING & HANDLING.....3

**2.6 CERTIFICATIONS, SAMPLING & TESTING.....4**

        2.6.1 CONTRACTOR REQUIREMENTS .....4

        2.6.2 MTD FUEL CONFORMITY TESTING .....4

**3.0 ORDERING & DELIVERY ..... 4**

**3.1 ORDERING FUEL.....4**

        3.1.1 METHOD & HOURS.....4

        3.1.2 ESTIMATED VOLUME & FREQUENCY .....4

**3.2 DELIVERY .....5**

        3.2.1 LOCATION, TIMEFRAME & HOURS .....5

        3.2.2 DRIVER REQUIREMENTS .....5

**4.0 PRICING & TAXES ..... 5**

    4.1.1 FUEL PRICE DETERMINATION .....5

    4.1.2 DELIVERY CHARGE.....6

    4.1.3 TAXES & EXEMPTIONS .....6

**5.0 WARRANTY ..... 6**

**5.1 WARRANTY DESCRIPTION .....6**

**5.2 DEFINITION OF DAMAGES .....6**

**5.3 REPAIR OF DAMAGES.....6**

## 1.0 PROJECT SUMMARY & GENERAL REQUIREMENTS

### 1.1 PROJECT SUMMARY

The Santa Barbara Metropolitan Transit District (MTD) desires to purchase blended biodiesel fuel 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 blended with B100 biodiesel up to a maximum of 20% by volume on an "as needed" basis with an expected annual volume of 630,000 U.S. gallons. Contractor shall provide the blended 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.

### 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. The 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 D 975 – 08a
- *Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels*, ASTM Designation D6751 – 08
- *Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)*, ASTM Designation: D 7467 – 08
- *Standards for Diesel Fuel*, California Code of Regulations Title 13, Division 3, Chapter 5, Article 2, §§2281 – 22850
- *Engine Requirements — Lubricating Oil, Fuel, and Filters*, Document DDC-SVC-BRO-0001, Detroit Diesel Corporation, 2009 [<http://www.ddcsn.com/cps/rde/xbcr/ddcsn/DDC-SVC-BRO-0001.pdf>]
- *Fuels for Cummins Engines*, Service Bulletin 3379001-17, Cummins Inc., January 10, 2009 [<http://www.sbmtd.gov/CurrentProcurements.htm>]
- *BQ-9000 Quality Management System Producer Requirements*, National Biodiesel Accreditation Commission, Revision 6, February 1, 2009 [<http://www.bq-9000.org/documents/default.asp>]
- *BQ-9000 Quality Management System Marketer Requirements*, National Biodiesel Accreditation Commission, Revision 6, February 1, 2009 [<http://www.bq-9000.org/documents/default.asp>]
- *Biodiesel Handling and Use Guide (Fourth Edition)*, Report NREL/TP-54043672, 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 which shall be blended with B100 biodiesel up to a maximum of 20% biodiesel by volume. MTD may, in its sole discretion for each delivery, specify that the fuel load be either 100% ULSD or any biodiesel blend between 2% and 20% (i.e., B2 to B20). It is the intent of MTD to order a B5 blend when there is a change in biodiesel marketer, producer, or feedstock source, including at inception of this Agreement. The expectation is to increase such blend to B20 when MTD is confident that the particular blend has no unacceptable negative effects on vehicle performance or maintenance. Regardless of this intention, Contractor shall be capable throughout this Agreement of providing any fuel combination described in this paragraph.

### 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

MTD will also consider fuels certified by CARB as an alternative diesel formulation. Any such alternative formulation shall have been explicitly identified to MTD in Contractor's bid, including a copy of such certification, and either accepted or rejected by MTD prior to the award of the Agreement.

#### 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

### 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 as it is loaded for delivery to the terminal; 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 UST.
- 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 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 Contractor Requirements**

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.

### **2.6.2 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;

## **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 ensure that the UST to be loaded by Contractor contains adequate available capacity to fully receive the load.

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

MTD estimated annual fuel consumption is 630,000 gallons based on an approximate weekday service level usage of 2,200 gallons, Saturday usage of 1,000 gallons, and Sunday usage of 800. 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 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 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

### 4.1.1 Fuel Price Determination

The ULSD portion of each fuel delivery shall be based on the fixed price per gallon submitted with the Contractor's bid. The B99 biodiesel portion of each fuel delivery shall be based on the OPIS index price per gallon stipulated below adjusted by the margin (premium or discount) submitted with the Contractor's bid. **(IF MTD SELECTS THE FLOATING ULSD PRICE OPTION, THE PRECEDING LANGUAGE WILL BE REPLACED WITH THE FOLLOWING)** The ULSD portion of each fuel delivery shall be based on the OPIS benchmark price per gallon stipulated below adjusted by the margin (premium or discount) submitted with the Contractor's bid. The B99 biodiesel portion of each fuel delivery shall be based on the OPIS benchmark price per gallon stipulated below adjusted by the margin (premium or discount) submitted with the Contractor's bid.

The Oil Price Information Service (OPIS) index that shall be used for B99 is the *Biodiesel B100 West* index listed under the *Key Renewable Fuels Regional Averages* that is reported each Monday in the OPIS *Ethanol & Biodiesel Information Service* newsletter. Such index shall be applicable for deliveries from the Monday of the report until the following Sunday. **(IF MTD SELECTS THE FLOATING ULSD PRICE OPTION, THE PRECEDING LANGUAGE WILL BE APPENDED WITH THE FOLLOWING)** The OPIS benchmark that shall be used for ULSD is the daily gross contract average rack price for Los Angeles No. 2 CARB ULS for the day that the fuel is loaded in the delivery truck (note that this is the benchmark issued each weekday at 9:59 AM eastern time, not the "closing" price issued at 5:59 PM).

Contractor shall include a copy of the applicable OPIS report with each invoice. Additional payment procedures are contained in the MTD Master Agreement.

### 4.1.2 Delivery Charge

Transportation and delivery charges shall be segregated from and not included in the fuel price per gallon discussed in Section 4.1.1 above. Contractor shall be reimbursed for all transportation and delivery charges at the fixed price per gallon submitted with its bid as listed on the Price Bid form.

### 4.1.3 Taxes & 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 of \$0.18 per gallon; and the Federal Excise Tax on Diesel Fuel of \$0.244 per gallon. Invoices shall take these exemptions and the Federal biodiesel "blenders" tax credit of \$1.00 per gallon into account. MTD is subject to all other applicable fees and taxes, which shall be included on each billing invoice. Current billable fees and taxes and the appropriate rate include:

Santa Barbara County Sales Tax	8.75%
California Oil Spill Fee	\$0.00119 per gallon
Federal LUST Fee	\$0.00100 per gallon
Federal Environmental Fee	\$0.00120 per gallon

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 the Statement of work and the Technical Specifications.

### 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 by filling or operating such vehicle with 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. 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%). 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 BLENDED BIODIESEL FUEL

## MASTER AGREEMENT with [insert 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 [insert contractor name], a [insert state name] [insert business type] (“Contractor”), at Santa Barbara, California, as of the later date set forth below the signatures executing this Agreement.

WHEREAS:

- A. MTD desires the on-going, as-needed supply and delivery of biodiesel-blended 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, experience, and technical and financial capacity 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 for Federal Fiscal Year 08/09* 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 [insert date] the statement of work contained in Invitation for Bids (IFB) for Biodiesel Supply & Delivery, a true copy of which is attached hereto as Exhibit “B” and incorporated herein by this reference.
5. Bid. Contractor has heretofore submitted on [insert date] 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 a fixed price of [insert price] which is in accordance with Exhibit “C”. [if pricing is more complicated, may be necessary to modify language and/or refer to bid pricing documents or exhibits]
8. Payment Schedule. Contractor shall submit an invoice to MTD upon each biodiesel 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 payment of Federal Excise and Transportation taxes. Unless specified otherwise in the Agreement, MTD is subject to applicable California Sales Tax for Santa Barbara County which shall be included in the Contractor’s bid price and shall not be paid otherwise by MTD.

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 [insert date].

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 be included in the Contractor's bid 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 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. *MTD Changes*. By written notice MTD may make changes to the statement of work. If the Contractor anticipates a change will cause a corresponding change in the cost of the Project or the time required for it's performance, the Contractor shall within thirty (30) calendar days of the notice submit a written claim for a price and/or time adjustment. If considered equitable, MTD will accept the claim as submitted. Otherwise, MTD will negotiate with the Contractor in order to reach an equitable adjustment. Any failure of the parties to reach agreement on the terms of the claim shall be resolved through the Disputes clause of this Agreement. Nothing in this clause shall excuse the Contractor from proceeding immediately with work as changed. *Contractor Changes*. If the Contractor finds that is it impractical to comply strictly with the statement of work, the Contractor shall submit a written change order request to MTD. Such request shall include a description of and reason. If the Contractor anticipates it's requested change will cause a corresponding change in the cost of the Project or the time required for it's performance, the Contractor shall submit a written claim for a price and/or time adjustment along with it's request. If the requested change is accepted by MTD and the claim is considered equitable, MTD will accept the claim as submitted. Otherwise, MTD will negotiate with the Contractor in order to reach an equitable adjustment. If the parties fail to reach agreement on the terms of the claim within a reasonable period of time, the change request will be denied by MTD. Under no circumstances shall the change order

be executed by the Contractor until MTD accepts such order as signified by the MTD authorizing official's signature upon the change order.

18. Insurance. General Requirements. The Contractor shall provide, at its sole expense, insurance coverage at limits not less than those specified herein with respect to the services provided under this Agreement. All insurance required for this project shall be first dollar coverage and shall be provided by companies licensed to practice in the State of California. Such insurance companies shall have a Best's Financial Strength Rating of A- or better, as shown in the on-line version of the Best's Rating Center. In lieu of first dollar coverage the Contractor may post a bond payable to MTD in an amount equal to the uninsured portion of the limits specified herein. The insurance described herein sets forth minimum limits of liability and coverage required and is not to be construed in any way as a limitation of the Contractor's liability. Comprehensive General Liability. Contractor shall provide Comprehensive General Liability Insurance for Bodily Injury and Property Damage with a liability limit of not less than \$5,000,000 with coverage extended for the endorsements to the policy as follows: Operations - Premises Liability; Independent Contractors Liability - Broad Form; Contractual Liability covering the Contractor's obligations herein; Personal Injury Liability extending to claims arising from employees of the Contractor; Completed Operations and Products Liability; Professional Liability Coverage. Automobile Liability. Contractor shall provide Automobile Liability Insurance covering all owned, hired, or non-owned vehicles used in connection with this project, with a liability limit of \$5,000,000. Workers' Compensation. Contractor shall provide Workers' Compensation Insurance, Employers Liability, Section B providing statutory limits of liability, and Employer's Liability Insurance with a liability limit of \$1,000,000. Pollution Liability. Contractor shall provide Pollution Liability Insurance with a liability limit of not less than \$5,000,000.

19. Bonding. Not applicable to this contract.

20. Termination. See Paragraph 21 (Termination) in *Federal Transit Administration: Contract Provisions for Federal Fiscal Year 08/09* 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 negligent acts, errors or omissions of the Contractor, including negligent 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. The obligations of the Contractor shall not extend to circumstances where the injury, or death, or damages is caused, in whole or in part, by the negligence of any third party operator, not including an assignee or subcontractor of the Contractor, subject to the right of contribution as provided in the next sentence below. In case of joint or concurrent negligence of the parties hereto giving rise to a claim or loss against either one or both, each shall have full rights of contribution from the other.

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:

<u>MTD:</u> Sherrie Fisher, General Manager Santa Barbara Metropolitan Transit District 550 Olive Street Santa Barbara, CA 93101 Fax (805) 963-3365	<u>CONTRACTOR:</u> [insert authorized official name & title] [insert contractor name] [insert contractor street address] [insert contractor city, state & zip] [insert contract fax number]
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26. Attorneys' Fees and Costs. In the event of a judicial dispute between the parties with respect to the enforcement or interpretation of this Agreement, the prevailing party in such dispute 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. All claims, counterclaims, disputes and other matters in question between MTD and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of California. Pending final resolution of a dispute thereunder the Contractor shall proceed diligently with the services provided under this Agreement.

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 for Federal Fiscal Year 08/09* which is attached hereto as Exhibit "A" for applicable requirements.

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

SANTA BARBARA MTD

[insert contractor name in caps]

\_\_\_\_\_  
Sherrie Fisher, General Manager

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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**FEDERAL TRANSIT ADMINISTRATION**  
**CONTRACT PROVISIONS FOR FEDERAL FISCAL YEAR 08/09**

**TABLE OF CONTENTS**

1.	Fly America Requirements (not applicable to this contract) .....	1
2.	Buy America Requirements (not applicable to this contract) .....	1
3.	Charter Bus & School Bus Requirements (not applicable to this contract).....	1
4.	Cargo Preference Requirements (not applicable to this contract) .....	1
5.	Seismic Safety Requirements (not applicable to this contract).....	1
6.	Energy Conservation Requirements.....	1
7.	Clean Water Requirements .....	1
8.	Bus Testing (not applicable to this contract).....	1
9.	Pre-Award & Post-Delivery Audit Requirements (not applicable to this contract).....	1
10.	Lobbying.....	1
11.	Access to Records & Reports .....	2
12.	Federal Changes.....	2
13.	Bonding Requirements (not applicable to this contract) .....	2
14.	Clean Air .....	2
15.	Recycled Products (not applicable to this contract).....	2
16.	Davis-Bacon & Copeland Anti-Kickback Acts (not applicable to this contract) .....	2
17.	Contract Work Hours & Safety Standards Act (not applicable to this contract) .....	2
18.	[Reserved].....	2
19.	No Government Obligations to Third Parties.....	2
20.	Program Fraud & False or Fraudulent Statements & Related Acts .....	3
21.	Termination .....	3
22.	Government-Wide Debarment & Suspension .....	4
23.	Privacy Act (not applicable to this contract).....	4
24.	Civil Rights Requirements .....	4
25.	Breaches & Dispute Resolution.....	4
26.	Patent & Rights in Data (not applicable to this contract) .....	5
27.	Transit Employee Protective Agreements (not applicable to this contract).....	5
28.	Disadvantaged Business Enterprise (DBE) .....	5
29.	[Reserved].....	5
30.	Incorporation of Federal Transit Administration (FTA) Terms .....	5
31.	Drug & Alcohol Testing (not applicable to this contract) .....	5
32.	Intelligent Transportation System (ITS) (not applicable to this contract) .....	5

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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 may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in MTD's best interest. The Contractor shall be paid its costs, including any applicable contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to MTD to be paid the Contractor. If the Contractor has any property in its possession belonging to MTD, the Contractor will account for the same, and dispose of it in the manner MTD directs.

(b) Termination for Default: If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, MTD may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by MTD that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events not the fault of or are beyond the control of Contractor, MTD, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

(c) Opportunity to Cure: MTD in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to MTD's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from MTD setting forth the nature of said breach or default, MTD shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude MTD from also pursuing all available remedies against Contractor and its sureties for said breach or default.

(d) Waiver of Remedies for any Breach: In the event that MTD elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by MTD shall not limit MTD's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

## 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 1.9%. 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 {insert agency name} 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)**