



Invitation for Bids for Energy Storage System (ESS) Unit Replacements

SOLICITATION INSTRUCTIONS

Project Summary Sheet

Solicitation Issuance Date: Thursday, December 14, 2017

Project Description: Replace and provide new Energy Storage System (ESS) units for public transit agency hybrid-electric buses

Project Locations: MTD Maintenance Department at 550 Olive Street, Santa Barbara, CA 93101

Pre-Bid Meeting Date/Time: There will be no Pre-Bid meeting for this solicitation.

Requests/Clarifications Deadline: Wednesday, December 20, 2017, at 5:00 PM

Responses to Requests/Clarification: Wednesday, December 20, 2017

Bid Due Date/Time: Wednesday, December 27, 2017, at 2:00 PM

Bid Due Location: MTD Administrative Offices, 550 Olive Street, Santa Barbara, CA 93101
Reception Desk on 2nd Floor (bids opened in downstairs auditorium)

Bid Contents: Include the following forms: Price Bid, Bidder Information, References & Suppliers, and Acknowledgement of Addenda

Contract Award Date: Friday, December 29, 2017 (anticipated)

Solicitation Contact: Bradley Davis, Assistant General Manager
(805) 963-3364, bdavis@sbmtd.gov

Type of Solicitation: Sealed invitation for bids with award to low responsive, responsible bidder

Type of Contract: Fixed price

Bonding Required: None

Check MTD website at <http://www.sbmtd.gov/business-and-employment/active.html> for updates.

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SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
Invitation for Bids for Energy Storage System (ESS) Unit Replacement
SOLICITATION INSTRUCTIONS

1. PRE-BID SUBMITTAL ACTIVITIES

1.1 IFB CONTENTS & CONTRACT DOCUMENTS

The Santa Barbara Metropolitan Transit District (MTD) is issuing this *Invitation for Bids (IFB) for Energy Storage System (ESS) Unit Replacements* to engage the services of a single contractor to fully carry out all aspects of the project. This document provides direction on preparing bids and describes the bid review and contract award process. Specifications are contained in the attached *Scope of Work*. Additional terms and conditions are included in the *MTD Master Agreement* included with this IFB. They can also be viewed as part of this IFB which is available on the MTD website at <http://www.sbmtd.gov/business-and-employment/active.html>.

1.2 PRE-BID MEETING

There will be no pre-bid meeting for this solicitation. MTD has determined that the specification and statement of work within this solicitation are adequate to describe the product and services being requested.

1.3 COMMUNICATIONS, REQUESTS & CLARIFICATIONS

MTD will consider requests for clarifications or changes until Wednesday, December 20, 2017, at 5:00 PM. To be considered, such communications must be via e-mail to Bradley Davis at bdavis@sbmtd.gov. Requests for changes must be provided with sufficient information to allow MTD to make a determination. Notification of requests for clarification responses, accepted changes and/or approved equals will be provided by written addenda to all bidders.

1.4 IFB MODIFICATIONS & ADDENDA

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

2. BID PREPARATION & SUBMITTAL

2.1 MTD FORMS

Price Bid—Bids shall include the fully completed and signed *Price Bid* form included in this IFB. **Failure to fully complete and sign the *Price Bid* form will result in rejection of the bid.** Bidder shall include the ESS unit cost, warranty, installation, sales tax or any other costs for the complete project (seven ESS units installed), which shall determine the contract amount. Bidder shall also provide a price bid to extend the warranty from two years to five years. MTD retains the right to select either the low base bid (with two-year warranty) or the low base bid plus the three-year warranty (see *Price Bid* form for clarification).

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

References & Suppliers—Bid shall include the *References & Suppliers* form included in this solicitation. Note that for this Project, it is not necessary to provide credit references or supplier information. These sections have been noted as not necessary on the form. Completion of the "Work References" section is required. **Please list contact names, phone numbers, and email addresses that are CURRENT.**

Acknowledgement of Addenda—Bidder shall acknowledge either receipt of each Addendum or that there were no addenda by including in its bid the fully completed and signed *Acknowledgement of Addenda* form in this IFB.

Failure to include the signed Acknowledgement of Addenda form will render the bid non-responsive and it will be rejected.

2.2 LIQUIDATED DAMAGES

Bidders awarded under this contract may be subject to liquidated damages as specified in the *MTD Master Agreement* included with this IFB. As the existing ESS units have surpassed the OEM recommended useful life threshold, time is of the essence with respect to the completion of this Project. Therefore, in the case of any failure on the part of the awarded bidder to complete the proper installation of all seven (7) ESS units within the 45 day period specified in this IFB, liquidated damage penalties will be assessed in the amount of \$200 per calendar day per bus not completed beyond the 45 day threshold.

2.3 BID SUBMISSION & OPENING

One (1) original and two (2) complete copies of the 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: "Energy Storage System (ESS) Unit Replacement Bid." If using US Mail or a delivery service, bids must still be enclosed in the specified packaging within any delivery service packaging. Bids shall be delivered to:

Santa Barbara Metropolitan Transit District
ESS Replacement Bid
550 Olive Street
Santa Barbara, CA 93101

If hand delivered anytime up to 15 minutes prior to the bid opening, bid should be taken upstairs to the reception desk. After such time, bids should be brought to the 1st floor auditorium.

Bids will be accepted until 2:00 PM, local time, on Wednesday, December 27, 2017. Unless due to the fault of MTD, bids received after such time will not be considered. All bids received by the bid submission deadline will be opened and read aloud at an open public meeting immediately after the submittal deadline.

2.4 WITHDRAWAL OF BIDS

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

2.5 BID STIPULATIONS

Bids submitted as a result of this solicitation become the property of MTD. Bids submitted in response to this IFB will remain valid for 60 calendar days following the bid due date. MTD will not pay any cost incurred by bidder for preparation or delivery of its bid; reserves the sole right to review, accept or reject bids received; and reserves the right to cancel this solicitation in whole or in part if in its best interests to do so.

3. REVIEW & AWARD

3.1 BID DEFECTS OR COLLUSION

MTD may reject any bid that includes 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 future MTD solicitations.

3.2 RESPONSIVENESS

MTD shall examine the low bid to determine its 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 a low responsive bidder is determined.

3.3 RESPONSIBILITY

MTD shall assess the low responsive bidder's "responsibility," which is defined as satisfactory performance in previous contracts and having the financial and technical capacity to undertake the project. MTD will use the reference information provided in the bid and other information, as needed, for this determination. 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.

3.4 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.

3.5 CONTRACT AWARD & EXECUTION

MTD intends to award the contract to the low responsive, responsible bidder. The contract will be executed as soon as practicable after contract award and receipt of the insurance certificate meeting the requirements in paragraph 18 of the *MTD Master Agreement*. The contract will be composed of the *MTD Master Agreement*, the *Scope of Work*, and relevant portions of the Contractor's bid.

4. PROTEST PROCEDURES

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

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
Invitation for Bids for Energy Storage System (ESS) Unit Replacement
PRICE BID

Description	Price
ESS Unit Price with Two (2) Year Warranty	\$
Onsite Installation Price per Unit (including disposal of old ESS)	\$
Sales Tax on Applicable Items at 7.75% (exclude labor)	\$
Total Fixed Price Amount per Unit	\$
Total Bid Amount for ESS Replacement (multiply above total unit price by 7)	\$
Optional Additional Three (3) Year Warranty Price per Unit	\$
Total Bid Amount for Optional 3-Year Warranty (multiply above unit price by 7)	\$

The Bidder hereby represents and warrants that:

1. It has sufficiently informed itself in all matters affecting the performance of the work, or the furnishing of the labor, services, software, supplies, material, or equipment called for in carrying out the project.
2. It has reviewed the contract documents including the *MTD Master Agreement*, and the *Scope of Work*, and agrees to the terms and conditions thereof.
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 contract documents.
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 30 days following the bid due date and time.

Authorized Official Signature

Date of Signature

Authorized Official Name

Authorized Official Title

Business Name of Bidder

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
Invitation for Bids for Energy Storage System (ESS) Unit Replacement
REFERENCES & SUPPLIERS

Business Name of Bidder: _____

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: _____

Work References

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

Client Name: _____ Contact: _____ Phone/Email: _____

Client Name: _____ Contact: _____ Phone/Email: _____

Client Name: _____ Contact: _____ Phone/Email: _____

Suppliers

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

Firm: _____ Contact: _____ Phone: _____

Description of Work: _____

Firm: _____ Contact: _____ Phone: _____

Description of Work: _____

Firm: _____ Contact: _____ Phone: _____

Description of Work: _____

Firm: _____ Contact: _____ Phone: _____

Description of Work: _____

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
Invitation for Bids for Energy Storage System (ESS) Unit Replacement
ACKNOWLEDGEMENT OF ADDENDA

The undersigned acknowledges the Bidder's receipt of the following addenda to this IFB and has incorporated information or changes in said addenda within its bid (if no addenda were received, write "None" in the first blank):

Addendum No. _____ dated _____

Addendum No. _____ dated _____

Addendum No. _____ dated _____

Addendum No. _____ dated _____

Authorized Official Signature

Date of Signature

Authorized Official Name

Authorized Official Title

Business Name of Bidder

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

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Energy Storage System (ESS) Unit Replacement

SCOPE OF WORK

MTD is inviting Bids from qualified contractors to furnish, deliver, remove old, and install new Energy Storage System (ESS) units on seven (7) Gillig hybrid-electric buses and complete this work within 60 days from Notice to Proceed. Currently MTD's bus fleet consists of eighteen (18) hybrid-electric buses. MTD is seeking Bids for the supply of ESS units to be installed on seven of the oldest hybrid-electric vehicles in the fleet (model year 2007), which, with the exception of one bus, contain the original ESS units supplied by the vehicle manufacturer.

The selected Contractor shall furnish all necessary labor, equipment, materials, tools, supplies in order to furnish, deliver, and install new ESS units; and remove and dispose of used ESS units as specified below. The selected contractor must be Allison Hybrid Certified and the ESS units to be installed must be Allison Hybrid Certified.

1. Energy Storage System (ESS)

Seven (7) Energy Storage System (ESS) units are to be provided to power the Allison Hybrid Electric Drive (AHED) Model number HP50 EP. The proposed ESS units must be an Allison 29550278 Battery Pack, EnerDel Vigor+ Battery Pack, or an approved equal.

All ESS units shall be approved by the original equipment manufacturer. Nickel Cadmium (NiCad) or Lithium Ion energy storage system units will be acceptable. All units MUST be new and unused. No refurbished or refreshed ESS units will be acceptable.

2. Removal of Existing ESS Units

The cost to remove and dispose of existing ESS units in each bus shall be included as part of the installation cost in the Price Bid offer. The ESS units to be removed may contain a core value and contractors are hereby requested to consider this value when submitting the Price Bid.

All ESS cores shall be removed from MTD's property within twenty (20) working days after completion of the last ESS unit change out. ESS cores shall be recycled or disposed of in accordance with all applicable federal, state, and local laws and regulations.

3. Installation

The ESS units shall be installed on seven (7) buses during the term of the contract. As specified, the buses are Gillig 40 Foot Hybrid Low Floor Diesel (Cummins ISB) Allison HP 50 EP Hybrid Drive buses manufactured in 2007 (see section 7 of this Scope of Work). The ESS units shall operate within the parameters of the Allison Model HP50 EP Hybrid Electric Drive.

The Contractor shall be responsible to perform any and all system calibration(s) as required for the Allison Transmission Hybrid Drive HP 40/50 EP system to operate properly with the Contractor's supplied ESS unit.

4. Warranty

Each ESS unit provided under this contract shall carry a two (2) year warranty on all items furnished against defects in materials and/or workmanship and all costs associated with repairs or replacement. Contractors shall also provide an option to extend the standard warranty period for a minimum of three (3) years and provide the cost to purchase a warranty extension on the Price Bid sheet. MTD reserves the right to purchase an extended warranty.

Warranties shall commence upon the date of successful installation and acceptance by the MTD Project Manager. Should any defect in materials or workmanship, excepting ordinary wear and tear, appear during the standard or

any purchased extended warranty period, the Contractor shall repair or replace same at no cost to MTD.

5. Schedule of Work

Work will commence upon contract execution and issuance of the Notice to Proceed. Delivery and installation of all seven (7) ESS units shall be completed no later than SIXTY (60) Calendar Days from the issuance of the Notice to Proceed.

6. Contractor Use of the Premises

The Contractor shall perform all work during the hours of 6:00 AM – 8:00 PM (PST), Monday through Friday, excluding MTD observed Holidays. Delivery, removal, and installation of the ESS units shall be performed at the MTD Maintenance Facility, located at 550 Olive Street, Santa Barbara, CA 93101.

The Contractor shall at all times conduct their work as to ensure the least inconvenience to MTD and to comply with applicable codes and ordinances for safety. The Contractor shall coordinate access to the facility with MTD, including scheduling time and locations for deliveries.

The Contractor shall assume full responsibility for the protection and safekeeping of products under this Contract, stored on the premises. The Contractor will not be permitted to use MTD – owned equipment for the install of the ESS units, unless operated or authorized by MTD staff.

All work performed shall comply with applicable codes and standards from OSHA and/or any other agency having jurisdiction.

7. Buses

The following table provides detail on the buses involved in ESS Unit Replacement project.

ID #	Year	Make/Model	Model	VIN	Engine	Transmission
900	2007	Gillig Hybrid	40 Foot	15GGD191571077738	46690706	7110001631
901	2007	Gillig Hybrid	40 Foot	15GGD191771077739	46690799	7110001707
902	2007	Gillig Hybrid	40 Foot	15GGE191371077740	46690649	7110001723
904	2007	Gillig Hybrid	40 Foot	15GGE191771077742	46690496	7110001724
905	2007	Gillig Hybrid	40 Foot	15GGE191971077743	46690810	7110001702
906	2007	Gillig Hybrid	40 Foot	15GGE191071077744	46690277	7110001722
907	2007	Gillig Hybrid	40 Foot	15GGE191271077745	46689872	7110001706

Santa Barbara Metropolitan Transit District
Energy Storage System (ESS) Unit Replacements Project

MASTER AGREEMENT with [insert contractor name in caps]

THIS AGREEMENT is entered 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 to engage Contractor for Energy Storage System (ESS) Unit Replacements (the "Project");
- B. Contractor represents that it has the knowledge and experience to carry out the Project, and desires to carry out the Project pursuant to the terms and conditions hereof, and;
- C. Based upon the representations made by Contractor, MTD desires to retain the services of Contractor to carry out the aforesaid Project, upon the within terms and conditions.

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

1. Effect of Recitals. The foregoing recitals are hereby made express provisions of this Agreement.
2. FTA Provisions. Not applicable to this agreement.
3. Public Works Provisions. Not applicable to this agreement.
4. Scope of Work. MTD has heretofore issued on December 14, 2017, the Scope of Work contained in Invitation for Bids (IFB) for Energy Storage System (ESS) Unit Replacement, a true copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference.
5. Bid. Contractor has heretofore submitted on December 27, 2017 a bid to carry out the Project, true copies of relevant parts that are attached hereto as Exhibit "B" and incorporated herein by this reference.
6. Order of Control. Contractor shall carry out the Project described in Exhibit "A" to this Agreement for the price quoted in Exhibit "B". 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".
7. Contract Price. Contractor shall carry out the Project for a fixed price of [insert price] which is in accordance with Exhibit "B".
8. Payment. Contractor shall submit invoice to MTD upon completion of the Project. Payment from MTD shall be made to Contractor no later than thirty (30) days after acceptance by MTD (see paragraph 15) and receipt of a valid invoice, which shall be sent to: Santa Barbara MTD, Attn: Bradley Davis, 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 have been included in the Contractor's bid price and shall be included on the Contractor's invoice.
10. Project Schedule. Included in Scope of Work.
11. Delivery & Freight. Unless specified otherwise in the Scope of Work, any item provided under this Agreement shall be delivered FOB Santa Barbara to 550 Olive Street, Santa Barbara, CA 93101. Any Project freight and delivery charges shall have been already 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.

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 Scope 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. All items, services, work or systems to be furnished by the Contractor pursuant to this Agreement shall be subject to acceptance by MTD. MTD shall inspect such deliverables to determine acceptability no later than ten (10) calendar days after said deliverables are received and, if applicable under the Agreement or standard industry practice, installed or otherwise set up for usage. Acceptance shall occur when it is determined by MTD that all items, services, work or systems provided pursuant to this Agreement are in compliance with the Scope of Work or any other applicable contract documents. Upon acceptance, formal notification thereof shall be made by MTD via notice to the Contractor.

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

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

18. Insurance.

a. Contractor's Insurance Representations to MTD.

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

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

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

ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under this Contract. If Contractor shall fail to remedy such breach within five (5) business days after written notice by MTD, Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to MTD from such breach, unless a written waiver of the specific insurance requirement(s) is provided to Contractor by MTD. In the event of any failure to Contractor to comply with the provisions of this portion of the Agreement, MTD may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to Contractor, purchase such insurance, at Contractor's expense, provided that MTD shall have no obligation to do so and if MTD shall do so, Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

b. Conditions Affecting All Insurance Required Herein.

i. Cost of Insurance. All insurance coverage shall be provided at Contractor's sole expense.

ii. Maintenance of Insurance. All insurance coverage shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement.

iii. Status and Rating of Insurance Company. All insurance coverage shall be written through insurance companies admitted to do business in California and with a Best's Financial Strength Rating of A- or better, as shown in the on-line version of Best's Rating & Criteria Center.

iv. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage. In the event of cancellation, nonrenewal, or material reduction in coverage affecting the certificate holder, thirty (30) days prior written notice shall be given to certificate holder by certified mail, return receipt requested, except in the event of cancellation for nonpayment, in which event fifteen (15) days prior written notice shall be given.

v. Additional Insured Status. Additional insured status shall be provided in favor of MTD and its officers, employees and agents, including consultants, on all liability insurance required herein except workers' compensation/employer's liability and the certificate of insurance shall reflect same. Such additional insured coverage shall be primary to and shall seek no contribution from all insurance available to MTD, with MTD's insurance being excess, secondary, and noncontributing.

vi. Waiver of Subrogation. All insurance coverage carried by Contractor required herein shall provide a waiver of subrogation in favor of MTD for all loss covered by such insurance, and Contractor waives all rights of action against MTD for such loss.

vii. Primary Liability. All insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to MTD, with MTD's insurance being excess, secondary, and noncontributing. Where necessary, coverage shall be endorsed to provide such primary liability, and the certificate of insurance shall reflect same.

viii. Deductible/Retention. All insurance required for this project shall have a maximum deductible or self-insured retention of \$10,000 per policy.

ix. Claims Against Aggregate. MTD must be notified in writing by Contractor at MTD's address set forth herein immediately upon knowledge of possible claims against Contractor that might cause a reduction below seventy-five (75%) of any aggregate limit of any primary policy.

c. Commercial General Liability Insurance.

i. Coverage. Such insurance shall cover liability arising out of all locations and operations of Contractor, including but not limited to liability assumed under this Agreement (including the tort liability of another assumed in a business contract). Defense shall be provided as an additional benefit and not included within the limit of liability.

ii. Form. Commercial General Liability Occurrence form, at least as broad as an unmodified ISO CG 00 01 10 93 or its equivalent.

iii. Amount of Insurance. Coverage shall be provided with limits of not less than:

A. Each Occurrence Limit	\$1,000,000
B. General Aggregate Limit	\$2,000,000
C. Product-Completed Operations Aggregate Limit	\$2,000,000
D. Personal and Advertising Injury Limits	\$1,000,000
E. Fire Damage (any one fire)	\$50,000
F. Medical Expense (any one person)	\$5,000

iv. Required Endorsements.

A. Personal Injury Liability: The personal injury contractual liability exclusion shall be deleted.

B. Continuing Commercial General Liability Insurance: Contractor shall maintain such insurance in identical coverage, form, and amount, including required endorsements, for at least three (3) years following the date of acceptance by MTD of the last bus built pursuant to this Agreement.

d. Auto Liability Insurance.

i. Coverage. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned).

ii. Form. Business Auto Form (at least as broad as an unmodified ISO CA 0001 or its equivalent).

iii. Amount of Insurance. Coverage shall be provided with a limit of not less than \$1,000,000, combined single limit.

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

i. Coverage. Such insurance shall cover liability arising out of Contractor's employment of workers and anyone for whom Contractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted.

ii. Amount of Insurance. Coverage shall be provided with a limit of not less than:

- A. Workers' Compensation: Statutory limits
- B. Employer's Liability: \$1,000,000 each accident and disease.

f. Excess Liability Insurance (may be omitted with CGL coverage of \$5,000,000).

- i. Coverage. Such insurance shall be excess over and be no less broad than all coverages described above and shall include a drop-down provision.
- ii. Form. This policy shall have the same inception and expiration dates and the commercial general liability insurance required above.
- iii. Amount of Insurance. Coverage shall be provided with a limit of not less than \$3,000,000.

19. Bonding. Not applicable to this agreement.

20. Termination. Termination for Convenience. MTD may terminate this Agreement, in whole or in part, upon ten (10) calendar days' written notice to the Contractor when it is in MTD's best interest, at MTD's sole discretion. Upon the effective date of the written notice of termination, the Contractor shall cease performance of the Project or the applicable portion thereof to the extent specified in the notice. MTD shall pay the Contractor allowable costs and applicable profit thereon incurred to the specified date of termination, plus any costs deemed reasonably necessary to effectuate such termination. The Contractor shall promptly submit to MTD its termination claim for such costs. Termination for Default. If the Contractor shall breach any covenant, term or condition of this Agreement, including failure to make progress as to endanger performance of this contract in accordance with its terms, MTD may, by written notice, notify the Contractor setting forth the manner in which the Contractor is in default. MTD's right to terminate this Agreement, in whole or in part, for default may be exercised if the Contractor does not cure the condition(s) constituting the breach within ten (10) calendar days after receipt of such written notice. In such case, the Contractor shall cease performance of the Project or the applicable portion thereof to the extent specified in the notice, and MTD shall pay the Contractor allowable costs and applicable profit thereon incurred to the specified date of termination. The Contractor shall promptly submit to MTD its termination claim for such costs. If it is later determined by MTD that the Contractor did not breach the Agreement and had an excusable reason for not performing, MTD may at its sole discretion set up a revised delivery or performance schedule for the Agreement or applicable portion thereof and allow the Contractor to continue work, or treat the termination as a termination for convenience. Excess Costs. MTD may acquire, under terms and in the manner MTD considers appropriate, equivalent Project services and, if the Agreement or an applicable portion thereof was terminated for default, the Contractor shall be liable to MTD for any excess costs for such Project services. 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 Agreement, 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 Agreement. MTD Property. If, at termination, the Contractor has in its possession any property, whether completed or in progress, associated with the Project belonging to MTD, the Contractor shall return such property to MTD or otherwise dispense with in the manner MTD directs.

21. Liquidated Damages. It is mutually understood and agreed by and between the parties to the Contract that time is of the essence with respect to the completion of the Project and that in case of any failure on the part of the Contractor to complete the Project within the time specified as provided in the Scope of Work (provision 5), MTD will be damaged thereby. The amount of said damages being difficult if not impossible to ascertain definitively, it is hereby agreed that the amount of such damages due MTD from the Contractor shall be fixed at \$200 per calendar day per bus for each day project completion is delayed beyond the specified time. The Contractor hereby agrees to pay the said amounts as fixed, agreed and liquidated damages, and not by way of penalty, to MTD and further authorizes MTD to deduct the amount of the damages from money due the Contractor under this Agreement, computed as aforesaid. If the monies due the Contractor are insufficient or no monies are due the Contractor, the Contractor shall pay MTD the difference or the entire amount, whichever may be the case, within 30 calendar days after receipt of a written demand by MTD. The payment of aforesaid fixed, agreed and liquidated damages shall be in lieu of any damages for any loss of profit, loss of revenue, loss of use, or for any other direct, indirect, special or consequential losses or damages of any kind whatsoever that may be suffered by MTD arising at any time from the failure of the Contractor to fulfill the obligations referenced in this clause in a timely manner.

22. Infringement of Patents. The Contractor agrees that it will, at its own expense, defend all suits and proceedings instituted against MTD and pay any award of damages assessed against MTD in such suits or proceedings, insofar as the same are based upon any claim that the items, services, work, systems, or any part thereof, or any tool, or process used in or for the Project, constitutes an infringement of any legal United States copyright or patent. MTD agrees that it will give the Contractor prompt notice in writing of the institution of the suit or proceeding and permits the Contractor through its counsel to defend the same and gives the Contractor all information, assistance and authority necessary for the Contractor to do so. In case said items, services, work, systems, or any part thereof, or any tool, or process used in or for the Project, is in such

suit held to constitute infringement and use of same is enjoined, the Contractor shall, at its own expense and at its option, either procure for the MTD the right to continue using said items, services, work, systems, or any part thereof, or any tool, or process used in or for the Project, or replace same with non-infringing equipment, or modify it so it becomes non-infringing.

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

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

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

MTD:

Jerry Estrada, General Manager
Santa Barbara Metropolitan Transit District
550 Olive Street
Santa Barbara, CA 93101
Email: jestrada@sbmtd.gov

CONTRACTOR:

[insert authorized official name & title]
[insert contractor name]
[insert contractor street address]
[insert contractor city, state & zip]
[insert contractor email]

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

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

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

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

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

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

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

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

34. Equal Employment Opportunity. The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, or national origin. Such actions 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. The Contractor shall agree to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of the above paragraph. The Contractor shall insert a similar article to the above in all subcontracts entered into in connection with the contract governing this project, except subcontracts for standard commercial supplies or raw materials.

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

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

37. Counterparts & Email. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a scanned and emailed signature may substitute for and have the same legal effect as the original signature.

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

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

SANTA BARBARA MTD

[\[insert contractor name in caps\]](#)

Jerry Estrada, General Manager

[insert authorized official name & title]

Date

Date