Request for Qualifications (RFQ) for
Calle Real Property Permitting & Project Management

PROJECT SUMMARY SHEET

Project Name: Calle Real Property Permitting & Project Management RFQ

Solicitation Issuance Date: Wednesday, August 9, 2017

Project Description: Provide various services to MTD as described in the enclosed Scope of Work on an as needed basis.

Project Location(s): 550 Olive Street, Santa Barbara, CA 93101

Non-Mandatory Pre-Submittal Meeting Date/Time: Tuesday, August 22, 2017 at 2:00 P.M. (PDT)

Non-Mandatory Pre-Submittal Meeting Location: MTD, 550 Olive Street, Santa Barbara, CA 93101

Requests/Clarifications Deadline: Wednesday, August 30, 2017 at 5:00 P.M. (PDT)

Submittal Due Date/Time: Wednesday, September 13, 2017 at 4:00 P.M. (PDT)

Submittal Due Location: MTD Administrative Offices, 550 Olive Street, Santa Barbara, CA 93101 Reception Desk on 2nd Floor

Contract Award Date: Tuesday, September 26, 2017 (anticipated)

Solicitation Contact: Steve Maas, (805) 883-4227, smaas@sbumtd.gov

Type of Solicitation: Negotiated procurement based on evaluation of qualifications to perform the scope of work and fair and reasonable pricing

Type of Contract: Indefinite Delivery-Indefinite Quantity with Fixed Price Delivery Orders

Estimated Contract Amount: Not to exceed $300,000. Requested change orders will require MTD General Manager approval.

Contract Period: MTD’s goal is for the Scope of Work to be completed within eight months of the Notice to Proceed

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SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Qualifications (RFQ) for

Calle Real Property Permitting & Project Management

SOLICITATION INSTRUCTIONS

1. PRE-SUBMITTAL ACTIVITIES

1.1 PROJECT DESCRIPTION

The Santa Barbara Metropolitan Transit District (MTD) is issuing this Request for Qualifications (RFQ) for Calle Real Property Permitting & Project Management to engage the services of a qualified firm on an as-needed basis. MTD’s goal is for the selected firm to complete the Scope of Work within eight months of receiving a Notice to Proceed from MTD.

1.2 RFQ CONTENTS & CONTRACT DOCUMENTS

These Solicitation Instructions provide direction on preparing submittals and describe the evaluation, review and contract award process. Attached are required forms and certifications to be completed and included as part of the submittal. The RFQ consists of the following items and is available on the MTD website at [http://www.sbmtd.gov/business-and-employment/active.html](http://www.sbmtd.gov/business-and-employment/active.html).

- Solicitation Instructions which is the document presently being read
- Various attached forms to be completed as part of the proposal submittal process
- Lobbying Certification that prohibits the use of federal funds to lobby federal officers or employees.
- Scope of Work which specifies the type of services and projects that MTD anticipates during the contract term
- MTD Master Agreement which will serve as the contract between MTD and the winning firm
- Federal Transit Administration Contract Provisions covering terms and conditions for federally funded projects
- Attachment 1 which further describes the site.

Offerors should be certain to read all documents in this RFQ in order to prepare proposals correctly and be fully aware of the contractual terms and conditions. Failure of an offeror to follow instructions may result in rejection or disqualification of its proposal, and lack of knowledge of the contract terms shall not excuse it from its obligations.

1.3 PRE-SUBMITTAL MEETING (NON-MANDATORY)

There is a non-mandatory pre-submittal meeting to review the RFQ process and speak with MTD staff. The meeting will be on Tuesday, August 22, 2017 at 2:00 P.M. (PDT) in the John G. Britton Auditorium at MTD’s Administrative Offices located at 550 Olive Street, Santa Barbara. This will be the only opportunity for offerors to engage MTD staff in person.

1.4 COMMUNICATIONS, REQUESTS & CLARIFICATIONS

MTD will consider requests for clarifications or changes to the RFQ until Wednesday, August 30, 2017, at 5:00 P.M. (PDT). To be considered, such communications must be via email to Steve Maas at smaas@sbmtd.gov. Change requests must be provided with sufficient information supporting the request to allow MTD to make a fair and reasonable determination.
1.5 RFQ MODIFICATIONS & ADDENDA
MTD reserves the right to amend this RFQ 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 the MTD website at http://www.sbmtd.gov/business-and-employment/active.html and concurrently sent via email to all parties on the interested party list or that previously received the RFQ. Failure of an offeror to receive any addendum shall not relieve it from any obligation under the RFQ as clarified or modified.

1.6 RFQ & CONTRACT TERMINOLOGY
In this solicitation and the resultant contract, MTD may interchangeably use the terms “bid,” “offer,” “proposal” or “submittal” to mean your response to this solicitation. Also, MTD may interchangeably use the terms “bidder,” “offeror,” “submitter” or “proposer” meaning you as the responder to this solicitation. In addition, the terms “successful bidder,” “successful offeror,” “successful proposer,” “successful submitter,” “supplier,” “vendor,” “consultant,” and “firm” have the same meaning as the party to which a contract is awarded.

2. SUBMITTAL PREPARATION & SUBMISSION

2.1 MTD FORMS
Offeror Information—Submittal shall include the fully completed Offeror Information form included in this RFQ.

References & Suppliers—Submittal shall include the References & Suppliers form included in this solicitation. Note that only the “Work References” and “Credit References” sections are required for this solicitation. Please be certain to list contact names and phone numbers that are accurate and current.

Lobbying Certification—Submittal shall include the signed and dated Lobbying Certification form included in this RFQ. The form prohibits the offeror from using federal funds to lobby federal officers or employees.

Acknowledgement of Addenda—Offeror 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 OFFEROR-PREPARED DOCUMENTS
Proposal—A submittal indicating the capability of the offeror to perform the attached Scope of Work is required. It shall include the information and be formatted as follows:

- **Cover Letter**: Letter shall be signed by an officer authorized to bind the offeror contractually and shall address the below matters (Review of contract documents by legal counsel is advised).
  - Offeror’s interest and willingness to enter into a contract with MTD to perform as-needed services as described in the attached Scope of Work; and offeror’s commitment to the effect that it would exert its “best efforts” in fulfilling its responsibilities therein.
  - Offeror’s willingness to accept the contract terms and conditions included in the MTD Master Agreement, the Federal Transit Administration Contract Provisions, and the Scope of Work. If there are any contract terms that the offeror will not accept or proposes modifications to, the specifics of such should also be addressed in the cover letter or an attachment thereto. MTD is limited in its ability to alter the terms and will assess whether it would be able to contract with the offeror under the offeror’s proposed contract revisions.
  - Offeror’s ability and willingness to obtain insurance meeting the requirements indicated in paragraph 18 of the MTD Master Agreement.
• **General Background.** Include the date your firm went into business, its growth pattern over the years since inception, types of services provided, number of personnel employed, number of personnel specializing in the type of labor required for the services described under the *Scope of Work*, and experience in working with public agencies. Identify organization affiliations and licenses held which pertain to the work specified in support of MTD.

• **Firm Experience and Expertise.** Provide a detailed explanation of the experience and expertise of the firm to include that of a general nature, expertise related to public agencies, and that which pertain to the type of projects described in the *Scope of Work*.

• **Individual Experience and Expertise.** Provide a detailed explanation of the experience and expertise of personnel the offeror proposes to use to support MTD in meeting the requirements of a contract resulting from this RFQ. Include resumes for key personnel mentioned in this section. Key personnel are expected to be committed for the duration of the base contract period. Replacement of such personnel will not be permitted without prior consultation with and approval from MTD.

• **Additional Relevant Information (Optional).** Provide additional relevant information that may be helpful in the selection process (not to exceed 2 double-spaced pages). This information is optional.

• **Price Proposal.** Provide one or more fee schedules indicating billable labor, service, and material classifications and unit rates for the contract period. Provide individual hourly rates for each person included in the proposal. Labor unit rates include fringe benefits, direct and indirect costs, and any other administrative fees. If only providing one fee schedule for the period title the document accordingly. The fee schedule(s) must include the requisite labor, service, and material classifications and unit rates for completing assignments listed in the project categories in the *Scope of Work*.

### 2.3 Submittal Location & Deadline

Offeror shall submit a total of seven (7) complete sets of its proposal. This shall include one (1) set marked as original, five (5) complete copies, and one (1) electronic set (flash drive or CD) submitted in a non-transparent, sealed envelope or appropriate packaging plainly marked on the exterior with the name of the offeror and the following: "Calle Real Property Permitting & Project Management RFQ." If using US Mail or a delivery service, submittals must still be enclosed in the specified packaging within any delivery service packaging. Submittals shall be delivered to:

Santa Barbara Metropolitan Transit District  
Calle Real Property Permitting & Project Management RFQ  
550 Olive Street  
Santa Barbara, CA 93101

If hand delivered, submittals should be taken to the reception desk on the 2nd floor of the building where they will be logged in.

**Submittals will be accepted until Wednesday, September 13, 2017 at 4:00 P.M. (PDT).** Unless due to the fault of MTD, submittals received after such time cannot be considered and will be returned to the offeror unopened. There will be no public opening of submittals at the deadline or otherwise.

### 2.4 Withdrawal of Submittals

An offeror may withdraw a submittal any time prior to the submittal deadline by submitting a written request executed by the offeror's authorized representative. Any such withdrawal does not prejudice the right to resubmit a submittal by the submittal deadline.
2.5 SUBMITTAL STIPULATIONS

Proposals submitted as a result of this solicitation become the property of MTD. MTD will not pay any cost incurred by an offeror resulting from preparation or delivery of its submittal. MTD reserves the sole right to review, accept, or reject submittals; or to cancel this solicitation in whole or in part if it is in MTD’s best interest to do so. Submittals will remain valid for 90 calendar days following the submittal due date.

3. EVALUATION

3.1 PROPOSAL EVALUATION

MTD will evaluate submitted proposals to determine the most qualified offeror using the following criteria which are listed in relative order of importance:

1) Demonstrated successful experience performing projects similar to those in the Scope of Work.
2) Experience and expertise of personnel proposed to work on anticipated MTD projects.
3) Experience working with public entities.
4) Fair and reasonable labor and material costs listed in “Price Proposal.”

As part of the evaluation process, MTD will call references and may conduct interviews with offeror(s) it determines as likely to be the most qualified. Such interviews are for information gathering and clarification. MTD may conduct interviews in person or by phone. Any offeror requested to be interviewed shall make its best effort to be available within three (3) business days of such request. MTD reserves the right to award a contract without interviews and/or negotiations if deemed unnecessary to determine the most qualified, responsible offeror with a fair and reasonable price proposal.

3.2 OFFEROR RESPONSIBILITY

When MTD determines the offerors within the competitive range (i.e. the offerors who submitted the most highly rated proposals), MTD will assess their responsibility, which in this solicitation is defined as satisfactory performance in previous contracts and having the financial capacity to undertake the project. MTD will use the reference information provided in the submittal and other information, as needed, for this determination. If an offeror within the competitive range is not determined to be responsible, it will no longer be considered.

3.3 PRE-AWARD DELIVERABLES

Upon determination of the most qualified, responsible offeror with a fair and reasonable price proposal and prior to consideration of contract award, MTD will request the following from the offeror:

Insurance Certificate—A certificate of insurance showing the coverage types and dollar limits stipulated in paragraph 18 of the MTD Master Agreement.

4. CONTRACT AWARD

Upon determination of the most qualified, responsible offeror with a fair and reasonable price proposal satisfactorily providing the items required in Sections 2.1, 2.2, and 3.3 above, staff will prepare a recommendation for contract award to be considered by either the MTD General Manager or the MTD Board of Directors.

If the award recommendation is approved, it is the intent of MTD to execute the contract documents as soon as practicable after such award. The contract will be composed of the Federal Transit Administration Contract Provisions, the MTD Master Agreement, the Scope of Work, and relevant portions of the Contractor’s submittals and price proposal.
5. PROTEST PROCEDURES

MTD has established procurement protest procedures to ensure uniform, timely, and fair consideration of complaints received by MTD concerning its procurement activities. Such procedures are available on MTD’s website at the following link: http://www.sbmtd.gov/business-and-employment/purchasing.html
General Information

Business Name of Offeror: 

Business Type:  
  □ Corporation (State of Incorporation: _____ )  
  □ Partnership  
  □ Sole Proprietorship  
  □ Other: 

Business Federal Tax ID Number:  (provide SSN if sole proprietorship)

Corporate Headquarters

Street Address: 

City:  State:  Zip Code:  

Local Office  

(check box at left & leave below blank if the local office is the HQ or there is no local office)

Street Address: 

City:  State:  Zip Code:  

Authorizing Contact  (person authorized to bind the firm contractually, including change orders)

Name:  Title:  

Location:  □ HQ  □ Local Office  □ Other: 

Telephone:  Cell:  E-Mail:  

Project Manager  (anticipated primary contact during implementation of projects)

Name:  Title:  

Location:  □ HQ  □ Local Office  □ Other: 

Telephone:  Cell:  E-Mail:  

REFERENCES & SUPPLIERS

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: ____________
Client Name: ______________________  Contact: ______________________  Phone: ____________
Client Name: ______________________  Contact: ______________________  Phone: ____________

Suppliers
Provide the following information for any significant suppliers 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: ________________________________________________________________

Firm: ______________________  Contact: ______________________  Phone: ____________
Description of Work: ________________________________________________________________

Suppliers not applicable to this solicitation
SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Qualifications (RFQ) for
Calle Real Property Permitting & Project Management

LOBBYING CERTIFICATION

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

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

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

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

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

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 Offeror ___________________________
SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Qualifications (RFQ) for

Calle Real Property Permitting & Project Management

ACKNOWLEDGEMENT OF ADDENDA

The undersigned acknowledges the Offeror’s receipt of the following addenda to this RFQ and has incorporated information or changes in said addenda within its submittal (if no addenda were received, write “None” in the first blank):

Addendum No.    dated        

Addendum No.    dated        

Addendum No.    dated        

Addendum No.    dated        

Note: It is the Offeror’s responsibility to ensure it receives all addenda which are posted on the MTD website at [http://www.sbmtd.gov/business-and-employment/active.html](http://www.sbmtd.gov/business-and-employment/active.html).

Authorized Official Signature  Date of Signature

Authorized Official Name  Authorized Official Title

Business Name of Offeror

(Signer must match authorized official shown on Offeror Information form)
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Request for Qualifications
for Calle Real Property
Permitting & Project Management

Scope of Work

August 9, 2017

Santa Barbara Metropolitan Transit District
550 Olive Street ● Santa Barbara, CA  93101
Phone: (805) 963-3364 ● Fax: (805) 963-3365 ● Website: www.sbmtd.gov
PROJECT DESCRIPTION

The Santa Barbara Metropolitan Transit District (MTD) is soliciting a firm to provide permit processing and project management services related to potential residential development of MTD’s property located at 4678 Calle Real/149 N. San Antonio Road in unincorporated Santa Barbara County. The site consists of four contiguous parcels totaling approximately 19 acres, with the following Assessor Parcel Numbers (APNs):

- APN 59-140-004 (8.85 acres)
- APN 59-140-005 (4.00 acres)
- APN 59-140-006 (4.66 acres)
- APN 67-230-026 (1.42 acres)

The site lies north of Calle Real between North San Antonio Road and Dexter Drive, west of the Santa Barbara County Government Complex and east of the Turnpike Road interchange with Highway 101.

The property is currently undeveloped, and is zoned Design Residential (DR). A 6.8-acre portion is zoned DR-0.2 and the remainder is zoned DR-20. The zoning does not align with parcel boundaries. Policy LUR-EGV-2.5 of the Eastern Goleta Valley Community Plan recognizes the potential need for a future land use and zoning boundary adjustment and, thus, allows for a General Plan Amendment and Rezone. The total development potential is approximately 233 units, not including any potential bonus density. Attachment 1 to this RFQ provides additional information regarding the site.

QUALIFICATIONS

Consultant must have prior experience and expertise in the required work and demonstrate a thorough understanding of all applicable Federal, state and local regulations, laws, policies, and procedures. Consultant must also have ability to perform the administrative and technical services in a timely, efficient, and accurate manner. Specific required experience includes:

- Extensive Santa Barbara County permitting & zoning ordinance knowledge
- Site planning of larger parcels & developments
- California Environmental Quality Act (CEQA) technical study management
Subconsultant administration
  o Any subconsultant proposed to provide support for any projects outlined in the Scope of Work must be approved by MTD prior to engagement. The experience and expertise of the proposed subconsultant’s firm, and that of their personnel anticipated to be working on MTD projects, must be supplied to MTD prior to engagement. The proposed subconsultant must comply with all terms of the contract.

REQUEST FOR QUALIFICATIONS PROCESS
The RFQ process will consist of the following steps:
  • A short list of qualified firms will be developed.
  • Panel interviews may be conducted.
  • The MTD Board of Directors will be asked to authorize the selected firm
  • The consultant agreement will be negotiated as an hourly fee amount for the entire duration of the agreement

SERVICES TO BE PROVIDED
Services consist of Phases I & II:
  • Phase I – Pre-Development Technical Studies
    o Conduct or oversee & manage selected pre-development studies, which may include but are not limited to the following:
      ▪ Preliminary title report
      ▪ Boundary survey, including permanent monuments
      ▪ Topographic survey, including:
        ▪ Mapping of easements and utilities
        ▪ Mapping of setbacks from Calle Real and US 101
      ▪ Assist in applications for service from applicable sewer and water districts
      ▪ Preliminary study of flood control and hydrology
      ▪ Preliminary archaeology study
      ▪ Preliminary biological study
      ▪ Prepare County-compliant factors for traffic generation model
      ▪ Other studies as required
    o Reports to MTD staff & others as requested
• Phase II – Assist MTD in Establishing Developer Selection Process
  o Recommend process for developer selection
  o Review developer proposals
  o Reports to MTD staff & others as requested

• Services to be performed may include but are not limited to the following:
  o Participate in meetings with MTD and their representatives
  o Coordinate with other public agencies as needed
  o Provide community outreach and public relations services
  o Acquaint MTD staff as necessary with on-going administration requirements of the project
  o Provide management services as needed to assist in the selection of a development firm
  o Provide technical assistance as required by MTD to ensure that best management practices are utilized
  o Provide miscellaneous administrative activities
  o Perform other relevant assignments relating to the project
  o Provide quality control
  o Maintain good record keeping
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 to engage Contractor for [insert project description] (the "Project");
B. Contractor represents that it has the knowledge and experience to carry out the Project, and desires to carry out the Project pursuant to the terms and conditions hereof, and;
C. Based upon the representations made by Contractor, MTD desires to retain the services of Contractor to carry out the aforesaid Project, upon the within terms and conditions.

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

1. Effect of Recitals. The foregoing recitals are hereby made express provisions of this Agreement.
2. FTA Provisions. The Project is funded in part by the Federal Transit Administration of the U.S. Department of Transportation and, as such, this Agreement is subject to the terms and conditions contained in Federal Transit Administration: Contract Provisions for Federal Fiscal Year [2017]: [Contract Type Description] which is attached hereto as Exhibit "[?]" and incorporated herein by this reference.
3. Public Works Provisions. Not applicable to this agreement.
4. Scope of Work. MTD has heretofore issued on [insert date] the scope of work contained in Request for Qualifications for Calle Real Property Permitting & Project Management, a true copy of which is attached hereto as Exhibit "[?]" and incorporated herein by this reference.
5. Submittal and Price Proposal. Contractor has heretofore submitted on [insert date] a proposal to carry out the Project, true copies of relevant parts that are attached hereto as Exhibit "[?]" and incorporated herein by this reference.
6. Order of Control. Contractor shall carry out the Project described in Exhibit "[?]" to this Agreement for the price quoted in Exhibit "[?]". 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". [modify order & add or delete exhibits as needed]
7. Estimated Contract Amount and Delivery Order Pricing. [Pricing will refer to proposal pricing documents or exhibits]
8. Payment Schedule. Contractor shall submit monthly invoices to MTD for services rendered or approved expenses incurred for such month. Invoices shall indicate a breakdown for each project invoiced including a description of services provided, Contractor and subcontractor/sub-consultant labor hours by category or individual, materials and supplies, etc. 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: Ryan Gripp, 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 [choose] bid [or] proposal price and shall be included on the Contractor’s invoice.
10. **Project Schedule.** To be established for each delivery order.

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 proposal price and shall not be paid otherwise by MTD.

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

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

14. **Defective, Damaged or Noncompliant Work.** Any items, services, work or systems acquired pursuant to this Agreement found to be defective, damaged or non-compliant with the 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.** Deliverables to be furnished by the Contractor to MTD pursuant to this Agreement may be subject to acceptance by MTD. If so, MTD shall inspect such deliverables to determine acceptability no later than ten (10) calendar days after said deliverables are received. Acceptance shall occur when it is determined by MTD that deliverables provided are in compliance with the terms of this Agreement.

16. **Warranty.** The Contractor shall warrant to MTD that, for five (5) years after MTD's full acceptance of items, services, work or systems, each shall conform with the requirements hereof and be free of defects. In addition to other remedies which may be available, MTD may at its option return any non-conforming or defective items to the Contractor and/or require correction or replacement of said item when the defect is discovered, all at the Contractor's risk and expense. If MTD does not require such correction or replacement of non-conforming or defective items, the Contractor shall repay such portion of the payment specified herein or such additional amount as is equitable under the circumstances. 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.** [adjust coverage types and amounts based on nature of the contract]

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

b. Conditions Affecting All Insurance Required Herein.

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

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

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

iv. **Restrictive, Limiting, or Exclusionary Endorsements.** All insurance coverage shall be provided to Contractor Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage in any manner without the prior express written approval of MTD.

v. **Limits of Liability.** The limits of liability may be provided by a single policy of insurance or by a combination of primary and umbrella policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.

vi. **Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage.** In the event of cancellation, nonrenewal, or material reduction in coverage affecting the certificate holder, thirty (30) days prior written notice shall be given to the certificate holder by certified mail, return receipt requested, except in the event of cancellation for nonpayment, in which event fifteen (15) days prior written notice shall be given. If insurer will not include in its coverage such written notifications, it shall be incumbent upon Contractor to comply with such written notification requirements.

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

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

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

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

xi. **Claims Against Aggregate.** MTD must be notified in writing by Contractor at MTD’s address set forth herein immediately upon knowledge of possible claims against Contractor that might cause a reduction below seventy-five (75%) of any aggregate limit of any primary policy.
c. **Commercial General Liability Insurance.**
   i. **Coverage.** Such insurance shall cover liability arising out of all locations and operations of Contractor, including but not limited to liability assumed under this Agreement (including the tort liability of another assumed in a business contract). Defense shall be provided as an additional benefit and not included within the limit of liability.
   ii. **Form.** Commercial General Liability Occurrence form, at least as broad as an unmodified ISO CG 00 01 10 93 or its equivalent.
   iii. **Amount of Insurance.** Coverage shall be provided with limits of not less than:
      - A. Each Occurrence Limit $1,000,000
      - B. General Aggregate Limit $2,000,000
      - C. Product-Completed Operations Aggregate Limit $2,000,000
      - D. Personal and Advertising Injury Limits $1,000,000
      - E. Fire Damage (any one fire) $50,000
      - F. Medical Expense (any one person) $5,000
   iv. **Required Endorsements.**
      - A. Additional Insured status as required in 18(b)(vii), above.
      - B. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18(b)(vi), above.
      - C. Personal Injury Liability: The personal injury contractual liability exclusion shall be deleted.
      - D. Primary Liability, as required in 18(b)(ix), above.
      - E. Waiver of Subrogation, as required in 18(b)(viii), above.
      - F. Continuing Commercial General Liability Insurance: Contractor shall maintain such insurance in identical coverage, form, and amount, including required endorsements, for at least three (3) years following the date of acceptance 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.
   iv. **Required Endorsements.**
      - A. Additional Insured status as required in 18(b)(vii), above.
      - B. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18(b)(vi), above.
      - C. Waiver of Subrogation, as required in 18(b)(viii), above.

e. **Workers’ Compensation/Employer’s Liability Insurance.**
   i. **Coverage.** Such insurance shall cover liability arising out of Contractor’s employment of workers and anyone for whom Contractor may be liable for workers’ compensation claims. Workers’ compensation insurance is required, and no “alternative” forms of insurance shall be permitted.
   ii. **Amount of Insurance.** Coverage shall be provided with a limit of not less than:
      - A. Workers’ Compensation: Statutory limits
      - B. Employer’s Liability: $1,000,000 each accident and disease.
   iii. **Required Endorsements.**
      - A. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18(b)(vi), above.
      - B. Waiver of Subrogation, as required in 18(b)(viii), above.
f. **Professional Errors & Omissions Liability Insurance.**
   i. **Coverage.** Such insurance shall cover claims alleged to arise out of the negligent performance of Contractor’s professional services.
   ii. **Amount of Insurance.** Coverage shall be provided with a limit of not less than $1,000,000 annual aggregate.

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.** For applicable terms, refer to Paragraph 24 (Civil Rights Requirements) in *Federal Transit Administration: Contract Provisions*, attached hereto as Exhibit "[?]".

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**

Jerry Estrada, General Manager

[insert contractor name in caps]

[insert authorized official name & title]

Date  Date

[exit to signature section]

**CALLE REAL PROPERTY PERMITTING & PROJECT MANAGEMENT**  Page 7 of 7  Master Version 20150128
# 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 ............................................................ 3
23. Privacy Act .................................................................................................................. 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
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 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.

8. **BUS TESTING—NOT APPLICABLE TO THIS CONTRACT**

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

10. **LOBBYING**

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

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

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

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

   This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure. [Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.] Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure.
[Note: The Contractor shall have previously submitted to MTD a separately signed Lobbying Certification containing the above language for itself and any subcontracts exceeding $100,000 as a condition of contract award.]

11. ACCESS TO RECORDS & REPORTS

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

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

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

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

12. FEDERAL CHANGES

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

13. BONDING REQUIREMENTS—NOT APPLICABLE TO THIS CONTRACT

14. CLEAN AIR

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

15. RECYCLED PRODUCTS—NOT APPLICABLE TO THIS CONTRACT

16. DAVIS-BACON & COPELAND ANTI-KICKBACK ACTS—NOT APPLICABLE TO THIS CONTRACT

17. CONTRACT WORK HOURS & SAFETY STANDARDS ACT—NOT APPLICABLE TO THIS CONTRACT

18. [RESERVED]

19. NO GOVERNMENT OBLIGATIONS TO THIRD PARTIES

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

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

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

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

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

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

### 21. TERMINATION

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

(b) Termination for Default

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

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

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

### 22. GOVERNMENT-WIDE DEBARMENT & SUSPENSION

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

23. PRIVACY ACT

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

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 2.9%. 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 MTD deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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

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

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

29. [RESERVED]

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MTD requests which would cause MTD to be in violation of the FTA terms and conditions. The Contractor agrees to include the requirements of this section in all subcontracts.

31. DRUG & ALCOHOL TESTING—NOT APPLICABLE TO THIS CONTRACT

32. INTELLIGENT TRANSPORTATION SYSTEM (ITS)—NOT APPLICABLE TO THIS CONTRACT
Summary of Santa Barbara Metropolitan Transit District Property - 4678 Calle Real

Location: On the north side of Calle Real and between San Antonio Road and Dexter Drive, adjacent to the Santa Barbara County Government Complex and near the Turnpike off ramp from Highway 101. The land is rectangular in shape containing approximately 1,320 feet of Calle Real frontage and a uniform depth of about 600 feet. See attached aerial maps.

Parcels: The property consists of four parcels totaling approximately 18.93 acres: (1) APN 59-140-004 – 8.85 acres; (2) APN 59-140-005 – 4 acres; (3) APN 59-140-006 – 4.66 acres; and (4) APN 67-230-026 – 1.42 acres. See attached Assessor Parcel maps.

Purchase History: Santa Barbara Metropolitan Transit District (MTD) purchased the property in 1985 for the purpose of potential bus terminal or transit site. Another site was acquired for that purpose instead and MTD started to focus its efforts on developing the property for residential purposes.

Zoning History: When MTD purchased the property in 1985 all four parcels were zoned residential. As a part of the 1993 Community Plan process three of the parcels were downzoned to Agriculture – A-1-5. Although some row crop farming did occur on the property years ago, the property is currently vacant and has not been farmed for at least a decade. An effort to rezone the property back to residential began in 2008 with the Eastern Goleta Valley Community Plan process. Ultimately, after years of effort, the property was designated as one of the two primary housing opportunity sites in the Eastern Goleta Valley Community Plan in 2015 and rezoned Design Residential. Specifically, 10.2 acres are zoned DR-20, 6.8 acres are zoned DR-.2 and the slightly less than 2 acre westernmost parcel remained zoned DR-20 for a total development potential of approximately 230 units, not including bonus density. The split zoning designation does not align with parcel boundaries. All of APNs 59-140-004 and 67-230-026 are zoned DR-20 while only approximately .6 acres of APN 059-140-005 and 1.26 acres of 059-140-006 contain that designation. The remaining 3.4 acres of 059-140-005 and 3.4 acres of 059-140-006 are zoned DR-.2. See attached Zoning Map.

As a partial accommodation for the awkward split zoning, the Eastern Goleta Valley Community Plan contains Policy LUR-EGV-2.5 which recognizes the potential for a future land use and zoning boundary adjustment and states:

MTD and Tatum/School District: The MTD properties (APNs 059-140-004, -005, -006), located at 4678 Calle Real/149 North San Antonio Road . . . shall receive land use designations appropriate for Residential Neighborhood Development. Consistent with
this policy, the MTD properties shall be designated RES-0.33 (west portion, 6.8 acres) and RES-20.0 (east portion, 10.2 acres)....

The locations of the boundaries of the designations identified above and associated zones may be modified as part of a General Plan Amendment and Rezone provided the total acreage associated with each designation does not change and the modification furthers the objectives of this policy. A Development Plan for these properties, respectively, shall:

- Plan, design, and propose one project for comprehensive consideration, rather than considering piece-meal proposals for the property.
- Provide Residential Neighborhood development complementary to surrounding uses.
- Cluster development and constrain development envelope(s) appropriately to generate usable public open space, develop recreation resources, and preserve environmental resources.
- Provide multimodal transportation and circulation improvements to generate connectivity with commercial, recreational, and educational/institutional destinations.
- Provide pedestrian and bicycle improvements sufficient to connect residential uses to adjacent commercial, recreational, and educational/institutional destinations.
- Buffer residential uses from impacts associated with Hwy 101 and Southern Pacific Railroad travel corridors.
- Provide landscaping and/or streetscape to enhance community character and multimodal transportation facilities.

**Development History:** As stated above, while some row crop farming did occur on the property years ago, the property is currently vacant and has not been farmed for at least a decade. In approximately 2003, MTD conducted a design charrette for development of all four parcels. As a result, a Santa Barbara County Housing Authority development team began negotiating with MTD to build a transit oriented development with approximately 400 units of primarily workforce and other product mixes. While originally MTD proposed to sell the property, the transaction morphed into a potential long term ground lease and then market conditions and other factors prevented the deal from ever coming to fruition.

MTD is currently conducting diligence through an Ad-Hoc Committee to determine whether to proceed with development at this time. During past efforts, MTD focused on transit oriented development ultimately with a preference for a long term ground lease. Currently, the focus of MTD’s development desires have yet to be determined and will be more fully developed in the coming months after receiving a report and recommendation from the Ad-Hoc Committee.
NOTICE
Assessor's Map Bk, 059-Pg, 14
County of Santa Barbara, Calif.
39 & 39 into 40; 40 into 470-01 thru 40
29 moved to 470-05
09/00