



Request for Proposals
for
Workers' Compensation
Third-Party Administration

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Request for Proposals
for
Workers' Compensation Third-Party Administration
Project Summary Sheet

Project Name: Workers' Compensation Third-Party Administration (TPA)

Solicitation Issuance Date: Tuesday, September 15, 2020

Project Description: The Santa Barbara Metropolitan Transit District (MTD), a California special district public transit operator, is requesting proposals from qualified TPAs for administration of MTD's self-insured workers' compensation program, covering approximately 208 employees, with approximately 155 of these employees members of Teamsters Local 186.

Project Location: MTD Business Office 550 Olive Street, Santa Barbara, CA 93101. MTD's service area is 52 square miles and includes the cities of Santa Barbara, Goleta and Carpinteria; and the unincorporated portion of the County of Santa Barbara between such cities including the areas of Montecito and Summerland.

Pre-Proposal Meeting Date/Time: None

Clarification & Change Request Deadline: Friday, September 25, 2020 at 10:00 AM PDT

Proposal Due Date/Time: Friday, October 9, 2020 at 10:00 AM PDT

Proposal Submittal Method: via email: purchasing@sbmtd.gov

Award Consideration Date: Tuesday, November 17, 2020 (anticipated)

Project Contact: Valerie White, Purchasing Agent, Phone: 805.963.3364 x 244 email: purchasing@sbmtd.gov

Contract Term: Three years six month period, plus two one-year options

Type of Contract: Firm Fixed Price

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SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Proposals for Workers' Compensation Third-Party Administration SOLICITATION INSTRUCTIONS

1. PROJECT DESCRIPTION

The Santa Barbara Metropolitan Transit District (MTD), a California special district public transit operator, is soliciting, via this Request for Proposals (RFP), a third party administrator (TPA) for administration of its self-insured workers' compensation program.

MTD provides public transit services to the South Coast of Santa Barbara County. The service area is 52 square miles and includes the cities of Santa Barbara, Goleta and Carpinteria; and the unincorporated portion of the County of Santa Barbara between such cities including the areas of Montecito and Summerland. In fiscal year 2018-2019 this was accomplished with 42 routes; 219,011 annual service hours; 2,627,848 annual service miles; and 6,288,980 passenger trips.

Due to the impact of the COVID-19 health crisis, in 2020 MTD significantly reduced that bus service. At the time of this RFP, MTD believes the service reduction is temporary and has not reduced its workforce. In fact, MTD anticipates a gradual and steady increase in workforce as new programs and projects are developed.

MTD today operates with approximately 208 employees (205 full-time employees, and 3 part-time):

- 145 Bus Operators
- 31 Administration
- 12 Mechanics and
- 8 Utility and Service Workers
- 8 Operations Supervisors
- 4 Customer Service Representatives

Bus operators, operations supervisors, mechanics and utility/ service workers are represented by the International Brotherhood of Teamsters– Local 186. The MTD management team and staff are unrepresented employees.

MTD has been self-insured since 1987. Over the last 5 years MTD has averaged 24 workers' compensation claims annually. In fiscal year 2019-2020, MTD received 9 workers' compensation claims. MTD carries excess Workers Compensation insurance with Public Risk Innovation, Solutions, and Management (PRISM) via Special District Risk Management Authority (SDRMA).

It is imperative that MTD secure and maintain a professional TPA in cooperation and coordination with MTD's risk management staff for all aspects of the workers' compensation program. This includes but is not limited to: reporting of injuries; employee contact; claims administration with timely and accessible documentation; claims investigation; calculating lost time and salary information; risk management consulting; and assisting MTD in developing cost control strategies. Details of the requirements are contained in the attached Scope of Services.

TPA services shall be provided for the three year, six month period January 1, 2021 through June 30, 2024 with two one-year options for the periods July 1, 2024 through June 30, 2025 and July 1, 2025 through June 30, 2026.

2. PRE-SUBMITTAL ACTIVITIES

2.1 COMMUNICATIONS, REQUESTS & CLARIFICATIONS

MTD shall accept questions and consider requests for clarifications or changes only until Friday, September 25, 2020 at 10:00 AM (local time). Offeror may request a clarification or change to any aspect or requirement of the RFP or any addenda thereto. To be considered, such communications must be directed to MTD Purchasing Agent via e-mail to purchasing@sbmtd.gov. All responses will be provided through written addenda.

2.2 RFP MODIFICATIONS & ADDENDA

MTD reserves the right to amend this RFP through written addenda. **Other than through written addenda, no other form of communication with any officer, employee or agent of MTD shall be binding upon MTD.** Failure of an Offeror to receive any addendum shall not relieve it from any obligation under the RFP as clarified or modified. Any addenda will be sent via e-mail to all parties known to have received the RFP and concurrently posted to MTD's website at <https://sbmtd.gov/about/doing-business/>.

3. PROPOSAL PREPARATION & SUBMITTAL

The Offeror's proposal shall include two types of information: Offeror-prepared documents and Offeror-completed forms provided by MTD.

3.1 OFFEROR-PREPARED DOCUMENTS

Letter of Transmittal – *Please limit to two pages.* Letter shall be signed by an authorized officer with full and complete authority to bind the Offeror contractually, and shall state and certify the Offeror to the following:

- Its interest and willingness to enter into a contract with MTD to carry out the TPA services as described in the attached *Scope of Services*.
- Its willingness to accept the contract terms and conditions included in the *MTD Master Agreement* and the *Federal Transit Administration Contract Provisions*.
- Its ability and willingness to obtain insurance meeting the requirements indicated in paragraph 18 of the *Master Agreement*.
- Its TPA is a recognized claims administrators of self-insured workers' compensation programs, licensed to do such business in the state of California.
- It has conducted at least five (5) years of TPA services with California workers' compensation claims.
- It possess sufficient experienced, state-certified claim adjusters and other resources to perform TPA services to MTD.

Firm Experience and Expertise – *Please limit to three pages.* Proposal shall provide the following:

- **Mission**
a description of the TPA firm, with an outline of services and experience performing workers' compensation claims administration in California.
- **Experience**
a description of any expertise and the number of years in providing similar services particularly to self-insured transit/government employers of similar size and scope of MTD.
- **Performance**
an explanation why MTD should award your TPA firm the contract for the administration of its workers' compensation program.

- **Location**
a description of the firm's geographic location(s) and detail as to which branch or location is proposed to provide TPA services to MTD.
- **Plans**
information whether there are any major changes (e.g. relocation of firm/consolidation) planned for proposer during the next twelve (12) months.
- **Subcontractors**
an explanation of any subcontractor and/or outsourced work associated with the proposed services, including a brief overview of the subcontractor including names and location. Note: subcontractors must meet the same insurance requirements listed in this RFP.
- **Additional Information**
any other information deemed appropriate for providing a general overall picture of the TPA and the service capabilities.

Staffing Plan – *Please limit to three pages, résumés excluded from page count.* Proposal shall respond to and include:

- **Leadership**
the names and background of principal owners, partners or officers including a résumé or description of experience.
- **Organizational Chart**
an organizational chart of the team proposed for MTD and description of the management structure.
- **Project Staff and Caseloads**
a description of the staff proposed to perform the *Scope of Services* including, number of personnel, job titles and the number of caseloads assigned per role. Identify by name who shall be MTD's main point of contact (Client Account Coordinator/Account Representative). Provide detailed written résumés for each relevant individual including qualifications listing educational background, training, experience servicing California self-insured agency claims, professional standing, licensure and/or certification. *Please limit each résumé to two pages.*
- **Staff Transition**
a statement if your firm will notify MTD in writing at least thirty (30) days prior to replacement of key employees, and that replacement employees will possess qualifications and experience equal to or greater than individuals being replaced.
- **Compliance and Best Practices**
a description how your firm ensures compliance with newly enacted statutes and rules and regulations, as well as detail the training and any continuing education provided to your workforce.
- **Additional Information**
any other information deemed appropriate to demonstrate that your firm will be adequately staffed with trained personnel to handle MTD's full caseload and have the capability to recruit such staff.

Work Plan – *Please limit to six pages, reporting examples excluded from page count.* Offeror shall provide a narrative that addresses the Offeror's understanding of MTD's needs and requirements. At a minimum, the Work Plan shall address and include:

- **Scope of Services**
an explanation whether TPA services will fully comply with the entire *Scope of Services*.
 - Select and describe one specific *Scope of Services* objective your TPA excels at.

- Detail all *Scope of Services* objectives your TPA is unable or unwilling to comply with, please indicate the objective and the specific reason(s) the objective cannot be accomplished and propose an alternate (where available).
- **Transition Plan**
a description of the transition plan for the transfer of claims administration effective January 1, 2021. Identify all items and present a timeline the TPA service would need to ensure uninterrupted benefit delivery to injured employees.
- **Risk Management Information System and Reporting**
details to the proposed computer operating system utilized to provide workers' compensation services. Please note that the Claims Management Information System (CMIS) / Risk Management Information System (RMIS) is considered to be critically important to MTD. Ideally, the system should allow MTD multi-users online access to claim files, adjuster notes, all correspondence, and reports (or if feature will be unavailable to MTD, how the same data and communication will be provided). MTD is interested in a TPA with a system that provides detailed billing management reports and allows MTD to query report data by Name, SSI#, Date of Loss. Samples of computer-generated management reports must accompany the proposal as an attachment.
- **Notifications**
describe how MTD will be alerted to key actions in processing of claims and how losses will be reported, as well as communicating patterns of late reporting (over 5 days), and when reserve levels change. Where available, MTD desires to utilize and track such activity through the RMIS portal.
- **Loss Control**
an outline of the loss control services provided by your Loss Control Department and what services will be provided to MTD. Upon contract award, MTD will work with the loss control coordinator to design a checklist so there is uniformity in assessments and opportunities generated.
- **Additional Information**
a description of any services not previously covered which may be of particular value to MTD and if the programs or resource is included in the proposal price or is an additional cost option.

3.2 MTD FORMS

In the attached MTD forms, MTD may interchangeably use the terms “TPA,” “Bidder,” “Offeror,” “Firm” and “Contractor.” Forms to be completed and returned with proposal include:

Price Proposal – Proposal shall include the fully completed and signed *Price Proposal* form included in this RFP package showing the total compensation for carrying out the project under the terms of the Agreement. **Failure to include a completed and signed price proposal using the provided form will render a proposal non-responsive and it will be rejected.**

Acknowledgement of Addenda – Offeror shall acknowledge either receipt of each Addendum, or that there were no addenda, by including in its proposal the fully completed and signed *Acknowledgement of Addenda* form in this RFP package.

Bidder Information – Proposal shall include the fully completed *Bidder Information* form included in this RFP package.

Credit & Work References – Proposals shall include the fully completed *Credit & Work References* form included in this solicitation. Work references shall include California TPA work similar to that described in this RFP to the extent feasible. Please be certain to list contact names and phone numbers that are current.

Lobbying Certification – Proposal shall include the fully completed and signed *Lobbying Certification* form required under federal law if the total bid amount exceeds \$100,000.

Noncollusion Declaration/Compensation Certification – Proposal shall include the signed and dated *Noncollusion Declaration* and *Compensation Certification* forms included in this RFP package.

3.3 ELECTRONIC PROPOSAL SUBMITTAL

One electronic proposal in PDF format shall be emailed to purchasing@sbmtd.gov with the email subject line stating "Workers' Compensation TPA Proposal." **Proposals will be accepted by MTD via email until Friday, October 9, 2020 at 10:00 AM (local time)**. It is advisable to submit the proposal in advance of the deadline to allow for the resolution of any email delivery problems. If the file size of the email submission exceeds server requirements, the email submission may be broken into smaller emails. Unless determined solely by MTD that a proposal was late due to the fault of MTD, submittals received after such time cannot be considered by MTD. There will be no public opening of proposals.

3.4 WITHDRAWAL OF PROPOSALS

An Offeror may withdraw a proposal any time prior to the submittal deadline by sending an email request from the Offeror's authorized representative. A proposal may be resubmitted by the submittal deadline.

3.5 PROPOSAL SUBMITTAL STIPULATIONS

Proposals received by MTD become the property of MTD. Proposals submitted will remain valid for ninety (90) calendar days following the bid due date. MTD will not pay any cost incurred by Offeror resulting from preparation or delivery of its proposal. MTD reserves the sole right to review, accept or reject proposals; or to cancel this solicitation in whole or in part if it is in MTD's best interest to do so.

4. PROPOSAL EVALUATION

4.1 PROPOSAL DEVIATIONS & COLLUSION

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

4.2 RESPONSIVENESS

MTD shall examine all proposals for completeness and responsiveness to the provisions of this RFP. MTD may request additional or clarifying information from an Offeror. **Proposals 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.**

4.3 EVALUATION

Responsive proposals from Offerors shall be subject to further assessment as follows:

Review by an Evaluation Committee – The purpose of the Evaluation Committee is to establish the firm that the committee believes will provide MTD with the best "value." Value for this RFP is determined by assigning weight to the four principal criteria: 20% - Firm Experience and Expertise; 20% - Staffing Plan; 35% - Work Plan; and 25% - Price Proposal.

The Evaluation Committee will evaluate and rank submittals to determine the most qualified Offeror(s). Following the initial evaluation and scoring, the Evaluation Committee will develop a ranking of submittals. Based upon the initial ranking, MTD's staff may either (1) determine "responsibility" (as described below) and transmit to the General Manager and/or Board of Directors a recommendation of contract award to the highest ranked and responsible Offeror; or (2) recommend establishment of a competitive range. Offerors determined to be within the competitive range may be invited for an interview, negotiate terms and/or asked to submit a Best and Final Offer (BAFO).

Determine Responsibility – For responsive proposals within the competitive range, MTD shall make an assessment of the Offeror's "responsibility." For purposes of this RFP, responsibility is defined as evidence of adequate professional and technical capacity and experience to carry out the TPA service; and satisfactory performance in previous contracts. Such process will use the reference information provided in the submittal and may involve requesting additional or clarifying information from an Offeror. The proposal from any Offeror not found to be responsible shall be considered non-responsive and rejected by MTD.

Interview – As part of the evaluation process, MTD may conduct interviews with the highest ranked Offeror or Offerors within the competitive range. Such interviews are for information gathering and clarification for the Evaluation Committee. MTD may conduct interviews in person or by utilizing teleconferencing and electronic means. 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.

4.4 BEST AND FINAL OFFER

MTD may require Offerors in the competitive range to submit BAFOs, which include any modifications to their Proposal or written responses to any issues, concerns and questions that were raised during the interviews and/or MTD's written request for BAFOs. MTD reserves the right to require a second round of BAFOs after the initial round has concluded.

4.5 FINAL EVALUATION

If MTD chooses to conduct interviews and/or request BAFO submittals, the Evaluation Committee will conduct a final round of scoring that takes into consideration information collected from interviews and/or BAFOs. Based upon the final scores, MTD will determine the highest ranked Offeror.

5. CONTRACT AWARD

5.1 AWARD PROCESS

If considered in MTD's best interest, the MTD General Manager may recommend to the MTD Board of Directors that a contract be awarded to the Offeror that has submitted the proposal that MTD finds provides the best value. It is anticipated that such recommendation will be considered by the Board at its regular meeting of Tuesday, November 17, 2020.

5.2 CONTRACT EXECUTION

The contract will be executed as soon as practical after contract award and receipt of certificates of insurance meeting MTD requirements. The contract will include the *MTD Master Agreement*, the *FTA Terms and Conditions*, the *Scope of Services*, and relevant portions of the Contractor's proposal (and any subsequent BAFO). A *Notice to Proceed* will be issued upon execution of the contract.

5.3 OPTION PROVISIONS

The option for two one-year contract extensions may be exercised if mutually agreed to by MTD and Offeror. To exercise the option, MTD will request a one-year contract extension three months prior to the termination of the existing contract.

6. 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: <https://sbmtd.gov/about/doing-business/>.

End of Solicitation Instructions Text (Also See Attachments 1-4)

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Proposals for Workers' Compensation Third-Party Administration

PRICE PROPOSAL

Claims Administration	Price
Fixed Price for TPA Services, January 1, 2021 – June 30, 2021 (six-month period)	\$
Fixed Price for TPA Services, July 1, 2021 – June 30, 2022 (twelve-month period)	\$
Fixed Price for TPA Services, July 1, 2022 – June 30, 2023 (twelve-month period)	\$
Fixed Price for TPA Services, July 1, 2023 – June 30, 2024 (twelve-month period)	\$
TOTAL Base Price for TPA Services for Claims Administration for the period January 1, 2021 through June 30, 2024	\$
Fixed Price for TPA Services, option year July 1, 2024 – June 30, 2025 (twelve-month period)	\$
Fixed Price for TPA Services, option year July 1, 2025 – June 30, 2026 (twelve-month period)	\$
TOTAL Price for Option Years for TPA Services for Claims Administration for the period July 1, 2024 through June 30, 2026	\$
TOTAL Proposed Price for Base plus all Option Years for TPA Services for Claims Administration for the period January 1, 2021 through June 30, 2026	\$

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*, the *Federal Transit Administration Contract Provisions*, and the *Scope of Services*, 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 90 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

Request for Proposals for Workers' Compensation Third-Party Administration

ACKNOWLEDGEMENT OF ADDENDA

The undersigned acknowledges the Offeror's receipt of the following addenda to this RFP 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	_____
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/about/doing-business/>.

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

Request for Proposals for Workers' Compensation Third-Party Administration

CREDIT & WORK REFERENCES

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 Name: _____

Contact Phone: _____ Contact E-Mail: _____

Vendor Name: _____ Contact Name: _____

Contact Phone: _____ Contact E-Mail: _____

Vendor Name: _____ Contact Name: _____

Contact Phone: _____ Contact E-Mail: _____

Work References

Include five recent clients for which you have provided TPA services in California.

Client Name: _____ Contact Name: _____

Contact Phone: _____ Contact E-Mail: _____

Client Name: _____ Contact Name: _____

Contact Phone: _____ Contact E-Mail: _____

Client Name: _____ Contact Name: _____

Contact Phone: _____ Contact E-Mail: _____

Client Name: _____ Contact Name: _____

Contact Phone: _____ Contact E-Mail: _____

Client Name: _____ Contact Name: _____

Contact Phone: _____ Contact E-Mail: _____

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Proposals for Workers' Compensation Third-Party Administration

LOBBYING CERTIFICATION

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

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

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

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

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

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

Authorized Official Signature

Date of Signature

Authorized Official Name

Authorized Official Title

Business Name of Vendor

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

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Request for Proposals for Workers' Compensation Third-Party Administration

NONCOLLUSION DECLARATION

The undersigned declares:

I am the _____ of _____,
(title) (business name of bidder)

the party making the included bid.

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

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

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

Authorized Official Signature

Authorized Official Name (printed)

COMPENSATION CERTIFICATION

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

Authorized Official Signature

Date of Signature

Authorized Official Name

Authorized Official Title

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
WORKERS' COMPENSATION THIRD-PARTY ADMINISTRATION SERVICES
SCOPE OF SERVICES

I. Claims Administration

Santa Barbara Metropolitan Transit District (“MTD”) calls for Third-Party Administration (“TPA”) Services to manage workers' compensation claims effectively by carrying out the procedures required for a successful program. The TPA shall be entrusted to manage both new claims and assume any “tail claims” from an existing administrator. This includes, at minimum, TPA meeting the following performance objectives:

- A. Compliance – TPA shall comply with all laws, rules, regulations and labor codes governing the administrator of Workers' Compensation as required by State of California and advise MTD of any legislative or regulatory changes when proposed and when enacted. In the event of any conflict between any laws, rules, regulations and MTD's *Scope of Services* objectives, agreements, terms and conditions, TPA shall comply with the more stringent requirement. Any changes in regulations that require the development of new procedures or special instructions shall be implemented at TPA's expense.
- B. Risk Management Information System – TPA shall facilitate all workers' compensation claims through a comprehensive Claims Management Information System or Risk Management Information System (RMIS) data warehouse that MTD is provided training and continued secure, online access to. The RMIS shall support the State mandated Electronic Data Interchange (EDI) and provide transfer interface compatibility. TPA shall be responsible for the cost and execution of the conversion and/or establishment and continued access by MTD to the RMIS and files, including all documents and images from the previous TPA and shall assume responsibility for the storage of files.

For each claim file accessed through the RMIS portal, a duplicative physical file shall also be made available to MTD as needed for MTD representatives, claims auditors and agents.

- C. Staffing – TPA shall designate a point of contact for MTD to ensure that the workers' compensation program is carried out with the best practices and procedures. Only experienced, senior adjusters with a minimum three years' experience shall be assigned to indemnity cases. Adjuster Caseloads shall be no more than one hundred twenty (120) open indemnity claims; one assistant per adjuster.
- D. Forms – TPA shall provide all the forms necessary for the processing of benefits or claims information and make available, and forms fillable, on paper and online.
- E. Claim Workflow – TPA shall notify MTD immediately upon notice of an injured worker's hospitalization as a result of the work injury regardless of the date of injury, and within twenty-four (24) hours of receipt of notice of any claim. Claim files and an established diary system shall be accessible to MTD through the RMIS and reflect a strategy and Plan of Action (POA) that is current, concise and date-driven indicative to a prompt and fair resolution.
- Within 24 hours – Three point contact shall occur (injured worker, medical facility and MTD). Where possible, the *Employer's Report of Occupational Injury or Illness* (Form 5020) shall be completed by the employee to acknowledge their account of the accident, injury or illness. Claim notifications should include the adjuster's name, phone number, claim number and a brief description of the loss.
 - Within 2 days – Claim files and a diary shall be created in the RMIS following receipt of a Form 5020 or TPA has knowledge of a potential claim and obtains information from MTD necessary

to create the file, whichever occurs first. At the time of set up, and on an as needed basis thereafter, all claims shall be reported to the Index Bureau.

- Within 14 days – An initial POA and an initial compensability decision must be clearly documented.
- Every 30 days – All active claim files shall be reviewed.
- Every 45 days – Adjusters shall update their file POA for active indemnity files.
- Within 90 days – The diary shall be reviewed to determine if it can be closed or will need to be reassigned to an Indemnity Adjuster. The final compensability decision is to be reviewed with MTD prior to notification.
- Every 90 days – Independent of the actual file handler, a Supervisory Review shall be performed on active indemnity files. Adjusters shall update their file POA for all future medical files.
- Every 180 days – All claims that have settled but are open for the employee's future medical care shall be reviewed by a Supervisor.

F. Employer Contact – MTD shall serve as a valuable resource to the TPA in the adjudication MTD's claims. MTD shall monitor every claim via online access to adjuster notes and diaries with the intent to provide ready access to any information needed by the claim handler such as job descriptions, information on questionable claims, etc. MTD Risk Management Staff shall be accessible and responsive to the TPA for assistance. For example, if an Employee's Claim Form for Workers' Compensation Benefits (Form DWC-1) has not been received by TPA within two (2) days after receiving the Form 5020, the examiner can contact MTD to ensure that the Form DWC-1 was given to the employee within one (1) day of knowledge of the injury. Additional TPA obligations include:

- TPA shall reply to all inquiries made by MTD on the same day, but no later than one (1) day.
- TPA shall be available, at its sole cost and expense, for on-site visits to MTD's location for an annual audit and review of program, and additional times upon request.
- TPA is subject to regular routine reporting weekly, monthly, quarterly, and annually to MTD as detailed throughout the *Scope of Services*, and summarized in Appendix A.
- TPA shall avoid all conflicts of interest or appearance of conflicts of interest and shall disclose to MTD in writing any such compensation received from any other organization for services related to performance of services described in this document.

G. Employee Contact – TPA shall develop, for review by MTD, materials which will provide information and guidance to MTD employees regarding workers' compensation and the self-insurance program. TPA shall assist injured employees (and meet with, as required) in resolving problems that arise from injury or illness claims. All employee contact shall be documented in the RMIS, and copies of all correspondence made available to MTD.

- In all non-litigated, lost time cases, where the employee has not returned to work, a telephone or personal contact shall be established with the injured employee within one (1) day of receipt of notice of claim. Such contact shall continue as often as necessary, but at least monthly.
- Return phone calls to employees shall be accomplished within one (1) day.
- All correspondence from employees shall be responded to within five (5) days of receipt.

H. Customer Service – At all times TPA shall provide exceptional customer service. The TPA shall document and respond to all complaints received from injured workers, defense counsel, and/or Risk Management and bring about resolution of such within two (2) days. MTD shall be notified of all complaints received, the resolution, and provided documentation of follow-up with employee.

- I. Reserves – Reserves shall be established based upon the ultimate probable cost of each claim and clearly identified and separated for Medical, Indemnity, and Expenses. Reserve increases of twenty-five thousand dollars (\$25,000) or more on any one claim must be communicated with MTD and approved prior to increase.

All reserve categories shall be reviewed on a regular basis but not less than at least every ninety (90) days and at end of fiscal year (June 30). For all open claims reserved at ten thousand dollars (\$10,000) and above, an initial status report shall be provided and then every ninety (90) days thereafter for the life of the file. Reviews shall include a detailed reserve worksheet with validation or within an extension of the Adjuster's POA update. Status Reports shall include a brief description of the loss, medical incurred, future medical anticipated, reserve analysis and plan for resolution of the claim.

- J. Medical Administration – TPA shall provide access to a medical provider network for the Santa Barbara area that shall be sufficient to meet the criteria of current labor codes and State regulations. Absent a medical provider network in place, TPA shall select a panel of general practitioners, specialists, hospitals, and emergency treatment facilities to which injured employees should be referred, as approved by MTD. The TPA shall regularly review and update the panel for effectiveness.

TPA shall arrange medical evaluations when needed, reasonable, and/or requested. After the initial three point contact, TPA shall maintain contact with treating physicians to ensure employees receive proper medical treatment, reports are received in a timely manner, and employees returned to full or modified employment at the earliest possible date. On an as-needed basis, TPA shall provide utilization review and/or professional managed care services, at MTD's additional expense, provided MTD's approval is obtained prior to the provision of such service.

- K. Medical Payments – TPA shall ensure that medical bills are reduced to resource-based relative value scale (RBRVS) and recommended rates, fees and schedules as adopted by the Administrative Director of the Division of Workers' Compensation and WCIRB. Medical bills shall be matched to the file, reviewed for correctness, approved for payment, and paid within sixty (60) days of receipt. The use of a service contractor for medical bill review at TPA expense is acceptable to determine accuracy, reasonableness and compliance with the fee schedule. If all or part of the bill is being disputed, TPA shall notify the medical provider, on the appropriate form letter within thirty (30) days.

- L. Compensability – The compensability determination (accept claim, deny claim, or delay pending the results of additional investigation) and the reasons for such determination shall be reviewed with MTD and documented. MTD retains authority to delay or deny a claim.

- M. Provision of Benefits – TPA shall compute and pay temporary disability benefits to injured employees based upon earnings information and authorized disability periods. TPA shall review, compute, and pay all informal ratings, death benefits, findings and awards, life pensions, or compromise and release settlements.

All such benefits shall be paid by the TPA from an MTD established bank Claim Payment Account funded by MTD. Once each week, TPA shall provide MTD with a detailed accounting of all workers' compensation benefits and allocated loss expenses paid from the account. The detailed accounting shall include the date and check number of all benefit and allocated loss payments and shall also include appropriate supporting documentation for allocated loss expense payments. A weekly check register summary shall be provided.

N. Indemnity Payments – The initial indemnity payment or voucher shall be issued and mailed to the injured employee together with a properly completed and correct DWC Form within fourteen (14) days of the first day of disability. All indemnity payments or vouchers subsequent to the first payment shall be verified, except for obvious long-term disability, and issued in compliance with labor codes and State regulations. TPA shall consistently document in the RMIS all updates of active Indemnity benefit disbursements.

Any late payments must include the self-imposed 10% penalty in accordance with labor codes and State regulations at the TPA's cost unless late payment was due to the fault of MTD. If penalties are assessed, MTD shall be advised of the reason and of the TPA's plans for payment of such penalty within five (5) days of assessment.

O. Transportation Expense – Transportation reimbursement shall be mailed within five (5) days of the receipt of the claim for reimbursement. When required by law, advance travel expense payments shall be mailed to the injured employee ten (10) days prior to the anticipated date of travel.

P. Return to Work – TPA shall provide assistance to MTD in establishing a modified duty/light duty program which is appropriate for injured employees while recovering and prior to their return to regular duties.

- TPA shall consult frequently with MTD regarding best practices and strategies for injured employees that work under the Collective Bargaining Agreement (CBA) with International Brotherhood of Teamsters Union – Local 186.
- TPA shall consult frequently with MTD in those cases where the injury residuals might involve permanent work restrictions and/or retirement potential.
- After each exam, the adjuster shall alert MTD and promptly document in the RMIS of any updated work restrictions. MTD shall be contacted as work restrictions change to confirm if modified duty/light duty is available or can be extended. Documentation should reflect timeliness and proactive pursuit of updated work restrictions.

Q. Permanent Disability – TPA shall assist injured employees in completing the necessary forms to obtain a permanent disability rating. TPA shall determine the nature and extent of permanent disability and arrange for an informal disability rating whenever possible to avoid Workers' Compensation Appeals Board litigation.

R. Investigation – TPA shall subscribe to the Index Bureau. The examiner shall request a report from the Index Bureau on all new indemnity claims. Subsequent requests should be made every six (6) months thereafter on all active indemnity claims. Information received back from the Index Bureau hits should be followed up on promptly and MTD shall be alerted regarding any claims that is identified as questionable and/or material to potential litigation.

An AOE/COE (Arising Out of Employment / Course of Employment) investigation shall be initiated within three (3) days of the decision to delay. MTD retains authority on the initiating any outside investigation and/or surveillance. MTD shall be kept informed on the scope and results of all investigations, and all activities shall be clearly documented in the RMIS claim file.

S. Litigated Cases – MTD reserves the right to select or change defense counsel. TPA shall cooperate with MTD legal counsel in all matters defending MTD in all matters pertaining to any aspect of workers' compensation claims from file creation and review through trial. When defense counsel is not necessary, TPA shall work closely with the applicant's attorney in informal disposition of litigated cases.

All assignments to outside counsel shall be done with MTD's authorization and consent. In conjunction with MTD, the TPA shall monitor outside counsel's progress. All preparation for a trial shall involve MTD so that all material evidence and witnesses are utilized to obtain a favorable result for the defense. The TPA supervisor or the examiner shall attend in person or be available by telephone as required at Workers' Compensation Appeals Board hearings, rehabilitation hearings, meetings with defense counsel, and meetings with MTD staff, departments, and employee groups as requested by MTD. It shall be at MTD's discretion if petitions for reconsideration, removal, disqualification and answers will be directed through DWC's Oxnard-Workers' Compensation Appeals Board or Santa Barbara-Workers' Compensation Appeals Board Satellite Office.

- T. Settlements – TPA shall obtain MTD's authorization prior to all settlement or stipulations. All requests for settlement require authorization by MTD's Board of Directors via a detailed case analysis form (see Appendix B).
- U. Subrogation – In all cases where a third party is responsible for the injury to the employee, the TPA shall pursue subrogation (unless instructed otherwise by MTD at the time of notification).
- When subrogation is to be pursued, the third party shall be contacted within ten (10) days with notification of MTD's right to subrogation and the recovery of certain claim expenses.
 - If the third party is a governmental entity, a claim shall be filed with the governing board within six (6) months of the injury or notice of injury.
 - Periodic contact shall be made with the responsible party and/or insurer to provide notification of the amount of the estimated recovery to which MTD will be entitled.

Whenever practical, the TPA should take advantage of any settlement in a civil action by attempting to settle the workers' compensation claim by means of a third party compromise and release. If such attempt does not succeed, then every effort should be made through the WCAB to offset claim expenses through a credit against the proceeds from the injured worker's civil action. If the injured worker brings a civil action against the party responsible for the injury, the TPA shall consult with MTD about the value of the subrogation claim and other considerations. Upon receipt of MTD's authorization, subrogation counsel shall be assigned to file a Lien or a Complaint in Intervention in the civil action.

- V. Vocational Rehabilitation – When Qualified Injured Worker/Non-Qualified Injured Worker status is determined, TPA shall advise the injured worker of his/her rehabilitation benefits within ten (10) days of knowledge of medical eligibility. TPA shall control rehabilitation costs, and secure the prompt conclusion of vocational rehabilitation benefits.
- W. Claim Reconciliation – All open claim files shall be reconciled: any time there is a change from one benefit to another (e.g., from temporary disability to permanent disability), when ten indemnity checks have been issued, or at least annually. Proof of the reconciliation should remain in the claim file. MTD has the right to audit at any time with three (3) days' notice to TPA.
- X. Excess Insurance – Cases that have the potential to exceed MTD's self-insured retention shall be reported in accordance with the reporting criteria established by the California Public Entity Insurance Authority (CPEIA) and any other excess insurance policies. All cases, which meet the established reporting criteria, are to be reported to MTD and MTD's excess carrier within ten (10) days of the day on which it is known the criterion is met. MTD may share claim file information and reports from the RMIS or provided by TPA with MTD's excess carrier or other designated representatives in the management of workers' compensation.

Y. Case Closure – TPA shall close all claims on which all medical and compensation benefits have been provided within a reasonable amount of time.

- Claim files shall never be allowed to go without examiner attention for a period of time longer than three (3) months.
- A supervisor shall have conducted regular reviews of all open indemnity claims with reserves in excess of fifty thousand dollars (\$50,000) and all problem or complex claims.
- Medical only cases must be closed within sixty (60) days from the date the letter went to employee indicating there is no permanent disability. All “Medical-Only” to “Indemnity” changes will need to be approved by MTD.
- Future medical claims shall remain open after the last payment of benefit per statutory requirements.

Payments on awards, computations, or compromise and release agreements shall be issued within ten (10) days following receipt of the appropriate document.

Z. Claims Reporting – TPA shall maintain all loss information and assist in the preparation of all reports and databases, which are now or will be required by the State of California and any other government agencies with respect to self-insurance programs.

The loss run shall be issued by the second (2nd) day of the month following the closing date. Monthly loss data shall be complete to support State reporting requirements, OSHA Log 300 reporting and for managerial, loss control, actuarial or financial purposes. Any corrections requested to the loss run shall be made within the month.

TPA shall support MTD in all MTD-scheduled audits and quarterly analysis, and provide reports at no additional cost to MTD, including reports on: Lag Time; Claims (frequency and severity) by Occupation; Occupation Loss Analysis by “Cause of Loss”; Top Five by Position Pie Charts; Claims (frequency and severity) “Cause of Loss”; and “Cause of Loss” Loss Analysis. Other loss reports may be required periodically. Example ad hoc reports include: Body Part, Frequency, Cause, and Lag Time.

End of Scope of Services Text (Also See Appendices A-B Attached)

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
WORKERS' COMPENSATION THIRD-PARTY ADMINISTRATION SERVICES
APPENDIX A**

Reporting—The following communication time table is a guide for MTD's expected responsiveness for managing a successful workers' compensation program. It is not exclusive to all communicative action, but highlights the key actions.

FREQUENCY	REPORT/CONTACT
ANNUALLY	On-site visit for claims audit and review of program
QUARTERLY	Review Reserve Categories Status Report on all open claims reserved at \$10,000 and above. Claims Analysis (lag time; claims: cause, occupation, frequency and severity) Ad-Hoc Reports
MONTHLY	Loss Run Reports
WEEKLY	Accounting of Benefit Disbursements Check Register of Claim Payment Account
IMMEDIATELY	New claim file opened Return phone call/e-mail to MTD Reserve increases \$25,000 on any claim Final Compensability Decision Notice of Claim Status Change (RTW, MO to Indemnity, etc.) Notice of Litigation and Settlement Notice to pursue Subrogation

CLAIM WORKFLOW	
Within 24 hours	3-point Contact Claim Notification, Form 5020 completed
Within 2 Days	Claim File Open, Initiate a diary
Within 14 Days	Claim POA created, Initial compensation determination
Every 30 Days	Claim file reviewed (Claim Examiner), Contact active, lost-time employees
Every 45 Days	Claim file reviewed (Adjuster)
Within 90 Days	Claim reviewed to be closed or reassigned; Final compensability determined
Every 90 Days	Supervisor review of all Indemnity Claims and Claims over \$50,000
Every 180 Days	Supervisor review of future medical care files
INVOICES	
Within 60 Days	Medical Payments Reviewed and Paid, or disputed
DISABILITY	
Within 14 Days	Initial Indemnity Payment
VOCATIONAL REHABILITATION	
Within 10 Days	Advise Qualified Injured Worker of benefits

CLAIM WORKFLOW (CONTINUED)	
REIMBURSEMENTS	
Within 5 Days	Transportation Reimbursement
INVESTIGATIONS	
Day 1	Initial report to the Index Bureau
Every 6 Months	Subsequent reports to Index Bureau on active Indemnity Claims
DECISION TO DELAY	
Within 3 Days	Initiate AOE/COE investigation
SUBROGATION	
Within 10 Days	Third Party Contact
EXCESS INSURANCE	
Within 10 Days	Report cases with potential to exceed self-insurance retention
CLAIM SETTLED	
Within 10 Days	Payment Disbursement
Every 90 Days	if applicable, Adjuster review claims open for future medical care
Every 180 Days	if applicable, Supervisor review claims open for future medical care

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
WORKERS' COMPENSATION THIRD-PARTY ADMINISTRATION SERVICES
APPENDIX B**

Request for Workers Compensation Claim Settlement - Template

This settlement proposal is provided and supported by:

TBD (TPA Claims Manager)
 TBD (MTD's appointed attorney)
 Rafael Cortez (MTD's Risk Administrator)

Date Prepared:

Approval Needed By (Date):

Please fill in the following:

Please consider a total settlement amount of \$

This settlement amount would include \$ of new money

Claimant Name:

Claim Number:

Employee status:

No longer employed by Santa Barbra MTD

Date of termination:

Reason for termination:

Still employed by Santa Barbara MTD

Settlement Type:

Compromise and Release (C&R); Full & Final With Resignation Without Resignation

Stipulated Award Indemnity only Other (explain):

Please input the financial data into the table below showing a good business case for settling the claim.

Cost component	Current Reserves (Incurred)	Current Paid Totals	Outcome if settlement is offered and accepted now. (\$ - New Money)	Possible outcome if claim is not settled now; Inclusive of Pairs.
Indemnity	\$	\$	\$	\$
Medical / Medicare Set Aside	\$	\$	\$	\$
Expense (Other (legal, admin))	\$	\$	\$	\$
Total	\$	\$	\$	\$

This total must match settlement amount requested

CAUSAL RELATION:

What injury occurred to the employee?

How did the injury occur?

Where did the injury occur?

Was this claim controverted? Yes No If Yes, was it a Full Denial Partial Denial

Describe why the claim was questioned and the process by which the denial was sustained or overturned:

Does the employee have other WC claims (past or present) while working with MTD? Yes No

If yes, describe those claims:

INVESTIGATION:

Has there been surveillance conducted Yes No

If yes, what was the result?

If no, why was it not conducted?

MEDICAL OVERVIEW:

Indicate the current medical status by clicking the appropriate box below:

Continuing to treat Maintenance visits Currently not treating (at MMI or P&S)

What was the initial diagnosis and treatment of the claimant?

What is the current diagnosis and treatment of the claimant?

What is the ongoing treatment plan?

Indicate Future Medical Provision(s) below:

Estimated yearly cost:

Life Expectancy:

Total Exposure: (Yearly average x Life Expectancy)

Explain key driver(s) of medical:

Medicare eligibility: Yes No

MSA allocation (if applicable):

INDEMNITY OVERVIEW:

Was there lost time from work? Yes No

Temporary Disability (TD) -

Period:

Rate per week:

Total Amount Paid:

Additional Exposure:

Indicated any other temporary disability exposure

Future ability to work:

Please provide status of any permanent work restrictions

Describe any scenarios where we are responsible for job training, or other labor market information. Provide State specific information, i.e. California – Supplemental Job Displacement Voucher (SJDV AKA Vocational Rehabilitation).

Permanent Disability (PD) (do not include string rating):

Rate per week:

Total Paid:

PD Rating: based on treating physician report, med-legal or the MMI findings %

Body Part 1: %

Body Part 2: %

Combined PD: % = \$

Estimated New Money owed: \$

LIEN EXPOSURE: \$

List any and all outstanding or resolved lien exposure with current status:

SETTLEMENT PROPOSAL:

PD: \$ or \$ new money

Future Medical Care: \$ or \$ new money

Voucher: \$

Other Exposure: \$

Subrogation/3rd Party Credits/Contribution \$

Total Settlement Proposal: \$ or \$ new money

Please delineate any potential off set recovery (i.e. subrogation) below.

Offsets:

CURRENT SETTLEMENT STRATEGY:

Describe any other information/relevant facts that support the settlement request rationale and the business case to assist in settlement approval. Please consider the following to support your settlement recommendations.

- What is the recommendation and strategy to move forward with settlement? What settlement discussions if any have occurred?
- Does it makes sense to consider a C&R or Stipulated Agreement and why?
- Describe any other pertinent information and rationale to support the settlement request.

- Indicate settlement demand from Applicant Attorney, if known/received. \$
- Describe a realistic scenario if the case goes to Trial/Judge's Decision. What is your estimated % of prevailing at trial?

Possible Outcome if Claim is Not Settled Now:

Describe a realistic scenario should settlement not be reached such as proceeding to Trial or further discovery.

Describe the current litigation concerns - why not settling the claim may drive up the legal costs.

Note: Please ensure the applicant attorney is in agreement with the projected settlement proposal. If not, this may lessen the opportunity to further obtain a settlement agreement with MTD's management.

Santa Barbara Metropolitan Transit District
Workers' Compensation Third-Party Administration

MASTER AGREEMENT with [insert contractor name in caps]

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

WHEREAS:

- A. MTD desires to engage Contractor for Workers' Compensation Third-Party Administration (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* which is attached hereto as Exhibit "A" and incorporated herein by this reference.
- 3. Public Works Provisions. Not applicable to this Agreement.
- 4. Scope of Services. MTD has heretofore issued on September 15, 2020 the scope of services contained in the Request for Proposals for Workers' Compensation Third-Party Administration, a true copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference.
- 5. 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 "C" and incorporated herein by this reference.
- 6. Order of Control. Contractor shall carry out the Project described in Exhibit "B" to this Agreement for the price quoted in Exhibit "C". All work and services shall be performed according to and controlled by the terms and provisions of this Agreement and the exhibits attached hereto. In the event of any conflict between the contract documents, the following order of control shall prevail: MTD Master Agreement, Exhibit "A", Exhibit "B", Exhibit "C".
- 7. Contract Price. Contractor shall carry out the Project for the fixed prices that are in accordance with Exhibit "C".
- 8. Payment. Contractor shall submit quarterly invoices to MTD for services rendered. Payment from MTD shall be made to Contractor no later than thirty (30) days and receipt of a valid invoice, which shall be sent via email to AP@sbmtd.gov.
- 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 proposal price and shall be included on the Contractor's invoice.
- 10. Project Schedule. Contractor shall provide services for the three year, six month period January 1, 2021 through June 30, 2024 with two one-year options for the periods July 1, 2024 through June 30, 2025 and July 1, 2025 through June 30, 2026.
- 11. Delivery & Freight. Unless specified otherwise in the scope of services, 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. Not applicable to this Agreement.

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. Not applicable to this Agreement.

15. Acceptance. Not applicable to this Agreement.

16. Warranty. Not applicable to this Agreement.

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

18. Insurance.

a. Contractor's Insurance Representations to MTD.

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

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

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

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

b. Conditions Affecting All Insurance Required Herein.

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

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

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

iv. Restrictive, Limiting, or Exclusionary Endorsements. All insurance coverage shall be provided to Contractor Parties in compliance with the requirements herein 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. Excess Liability Insurance. Not applicable to this Agreement.
 - g. 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 \$3,000,000 annual aggregate.
 - h. Other Insurance. MTD shall have the right, exercisable in its sole judgment at any time by giving prior written notice thereof to Contractor, to require Contractor to increase the limit and coverage amount of any insurance Contractor is required to maintain pursuant to this Agreement to an amount that MTD may, in its sole judgment, deem reasonably sufficient; and purchase other insurance and/or endorsement in such amounts or types as MTD may reasonably require from time to time.
19. Bonding. Not applicable to this Agreement.
20. Termination. For applicable terms, refer to Paragraph 21 (Termination) in *Federal Transit Administration: Contract Provisions* which is attached hereto as Exhibit "A".
21. Liquidated Damages. Not applicable to this Agreement.
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. Definitions. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. Subject data includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software (including, but not limited to, source codes), engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration. *MTD Rights.* MTD reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for MTD purposes, any subject data or copyright. As used in the previous sentence, "for MTD purposes," means use only for the direct purposes of MTD. Without the copyright owner's consent, MTD may not extend its license to any other party. *Public Information.* When MTD awards a contract for experimental, developmental, or research work, it is MTD's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless MTD determines otherwise, MTD and the Contractor performing experimental, developmental, or research work required by the contract agrees to permit MTD to make available to the public, either MTD's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data and shall be delivered as MTD may direct.

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* which is attached hereto as Exhibit "A".

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

FEDERAL TRANSIT ADMINISTRATION

CONTRACT PROVISIONS

Workers' Compensation Third-Party Administration - Contractor Name

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1. **FLY AMERICA REQUIREMENTS (NOT APPLICABLE TO AGREEMENT)**
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5. **SEISMIC SAFETY REQUIREMENTS (NOT APPLICABLE TO AGREEMENT)**
6. **ENERGY CONSERVATION REQUIREMENTS**

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

7. **CLEAN WATER REQUIREMENTS**

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

8. **BUS TESTING (NOT APPLICABLE TO AGREEMENT)**

9. **PRE-AWARD & POST-DELIVERY AUDIT REQUIREMENTS (NOT APPLICABLE TO AGREEMENT)**

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 AGREEMENT)

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 AGREEMENT)**16. DAVIS-BACON & COPELAND ANTI-KICKBACK ACTS (NOT APPLICABLE TO AGREEMENT)****17. CONTRACT WORK HOURS & SAFETY STANDARDS ACT (NOT APPLICABLE TO AGREEMENT)****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.

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

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

22. GOVERNMENT-WIDE DEBARMENT & SUSPENSION

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

23. PRIVACY ACT

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 AGREEMENT)

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS (NOT APPLICABLE TO AGREEMENT)

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 AGREEMENT)

32. INTELLIGENT TRANSPORTATION SYSTEM (ITS) (NOT APPLICABLE TO AGREEMENT)