

# Santa Barbara Metropolitan Transit District

*[insert name of project]*

## 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 *[insert project description]*(the "Project");
- B. Contractor represents that it has the knowledge and experience to carry out the Project, and desires to carry out the Project pursuant to the terms and conditions hereof, and;
- C. Based upon the representations made by Contractor, MTD desires to retain the services of Contractor to carry out the aforesaid Project, upon the within terms and conditions.

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

1. Effect of Recitals. The foregoing recitals are hereby made express provisions of this Agreement.
2. FTA Provisions. The Project is funded in part by the Federal Transit Administration of the U.S. Department of Transportation and, as such, this Agreement is subject to the terms and conditions contained in *Federal Transit Administration: Contract Provisions for Federal Fiscal Year [?/?/?/?]: [Contract Type Description]* which is attached hereto as Exhibit "[?]" and incorporated herein by this reference. *[replace clause with "Not applicable to this agreement." if not a federally funded project]*
3. Public Works Provisions. This Project is subject to the *State of California Provisions for Public Works Projects*, which is attached hereto as Exhibit "[?]" and incorporated herein by this reference. *[replace clause with "Not applicable to this agreement." if not subject to CA public works laws]*
4. [choose] Statement of Work [or] Technical Specifications. MTD has heretofore issued on *[insert date]* the *[choose]* statement of work *[or]* technical specifications contained in *[choose]* Invitation for Bids (IFB) *[or]* Request for Proposals for *[insert project name]*, a true copy of which is attached hereto as Exhibit "[?]" and incorporated herein by this reference. *[if SOW or TS amended, may need to modify]*
5. [choose] Bid [or] Proposal. Contractor has heretofore submitted on *[insert date]* a *[choose]* bid *[or]* proposal to carry out the Project, true copies of relevant parts that are attached hereto as Exhibit "[?]" and incorporated herein by this reference. *[modify clause if multiple proposals, BAFO, etc. submitted]*
6. Order of Control. Contractor shall carry out the Project described in Exhibit "[?]" to this Agreement for the price quoted in Exhibit "[?]" . All work and services shall be performed according to and controlled by the terms and provisions of this Agreement and the exhibits attached hereto. In the event of any conflict between the contract documents, the following order of control shall prevail: MTD Master Agreement, Exhibit "A", Exhibit "B", Exhibit "C". *[modify order & add or delete exhibits as needed]*
7. Contract Price. Contractor shall carry out the Project for a fixed price of *[insert price]* which is in accordance with Exhibit "[?]" . *[if pricing is more complicated, may be necessary to modify language and/or refer to bid or proposal pricing documents or exhibits]*
8. Payment. Contractor shall submit invoice to MTD upon completion of the Project. Payment from MTD shall be made to Contractor no later than thirty (30) days *[modify period if appropriate]* after acceptance by MTD (see paragraph 15) and receipt of a valid invoice, which shall be sent to: Santa Barbara MTD, Attn: *[Accounts Payable]*, 550 Olive Street, Santa Barbara, CA 93101. *[modify clause accordingly if progress payments or other methods are*

utilized; must include taking title to materials for which progress payments are made if federally funded (and recommended even if not federally funded)]

9. Taxes. MTD is exempt from the payment of Federal Excise and Transportation taxes. Unless specified otherwise in the Agreement, MTD is subject to applicable California Sales Tax for Santa Barbara County which shall have been included in the Contractor's [choose] bid [or] proposal price and shall be included on the Contractor's invoice.

10. Project Schedule. [replace clause with "Not applicable to this agreement." if appropriate; otherwise, describe the schedule or refer to an exhibit]

11. Delivery & Freight. Unless specified otherwise in the [choose] statement of work [or] technical specifications, 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 [choose] bid [or] proposal price and shall not be paid otherwise by MTD.

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

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

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

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

16. Warranty. [if no warranty provisions in SOW or TS:] The Contractor shall warrant to MTD that, for five (5) years [modify period as appropriate] after MTD's full acceptance of items, services, work or systems, each shall conform with the requirements hereof and be free of defects. In addition to other remedies which may be available, MTD may at its option return any non-conforming or defective items to the Contractor and/or require correction or replacement of said item when the defect is discovered, all at the Contractor's risk and expense. If MTD does not require such correction or replacement of non-conforming or defective items, the Contractor shall repay such portion of the payment specified herein or such additional amount as is equitable under the circumstances. The rights of MTD hereunder are in addition to, and not limited by, the Contractor's standard warranties. Acceptance of items, services, work or systems by MTD, or payment therefor, shall not relieve the Contractor of its obligations thereunder. [if warranty provisions in SOW or TS:] Pursuant to the warranty provisions contained in the [choose] statement of work [or] technical specifications, the Contractor shall warrant to MTD that, for the specified period

after MTD's full acceptance of items, services, work or systems, each shall conform with the requirements hereof and be free of defects. The rights of MTD hereunder are in addition to, and not limited by, the Contractor's standard warranties. Acceptance of items, services, work or systems by MTD, or payment therefor, shall not relieve the Contractor of its obligations thereunder.

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

18. Insurance. [adjust coverage types and amounts based on nature of the contract]

a. Contractor's Insurance Representations to MTD.

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

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

B. are being, or have been, obtained by Contractor in support of Contractor's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy, or failure of any insurance company carrying 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.
  - i. Coverage. Such insurance shall be excess over and be no less broad than all coverages described above and shall include a drop-down provision.
  - ii. Form. This policy shall have the same inception and expiration dates and the commercial general liability insurance required above.
  - iii. Amount of Insurance. Coverage shall be provided with a limit of not less than \$X,000,000.
- 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 \$1,000,000 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. [if no bonding requirements:] Not applicable to this agreement. [If bonding required and the FTA provisions are incorporated:] For applicable terms, refer to Paragraph 13 (Bonding Requirements) in *Federal Transit Administration: Contract Provisions for Federal Fiscal Year [???]: [Contract Type Description]* which is attached hereto as Exhibit "[?]", [otherwise:] Contractor shall obtain performance and payments bonds each with the penal amount equal to 100 percent of the original contract price. MTD may require additional bond protection if the contract price is increased. The increase in protection shall equal 100 percent of the increase in contract price.

20. Termination. [If the FTA provisions are incorporated:] For applicable terms, refer to Paragraph 21 (Termination) in *Federal Transit Administration: Contract Provisions for Federal Fiscal Year [???]: [Contract Type Description]* which is attached hereto as Exhibit "[?]", [otherwise:] *Termination for Convenience.* MTD may terminate this Agreement, in whole or in part, upon ten (10) calendar days written notice to the Contractor when it is in MTD's best interest, at MTD's sole discretion. Upon the effective date of the written notice of termination, the Contractor shall cease performance of the Project or the applicable portion thereof to the extent specified in the notice. MTD shall pay the Contractor allowable costs and applicable profit thereon incurred to the specified date of termination, plus any costs deemed reasonably necessary to effectuate such termination. The Contractor shall promptly submit to MTD its termination claim for such costs. *Termination for Default.* If the Contractor shall breach any covenant, term or condition of this Agreement, including failure to make progress as to endanger performance of this contract in accordance with its terms, MTD may, by written notice, notify the Contractor setting forth the manner in which the Contractor is in default. MTD's right to terminate this Agreement, in whole or in part, for

default may be exercised if the Contractor does not cure the condition(s) constituting the breach within ten (10) calendar days [modify period as appropriate] after receipt of such written notice. In such case, the Contractor shall cease performance of the Project or the applicable portion thereof to the extent specified in the notice, and MTD shall pay the Contractor allowable costs and applicable profit thereon incurred to the specified date of termination. The Contractor shall promptly submit to MTD its termination claim for such costs. If it is later determined by MTD that the Contractor did not breach the Agreement and had an excusable reason for not performing, MTD may at its sole discretion set up a revised delivery or performance schedule for the Agreement or applicable portion thereof and allow the Contractor to continue work, or treat the termination as a termination for convenience. *Excess Costs.* MTD may acquire, under terms and in the manner MTD considers appropriate, equivalent Project services and, if the Agreement or an applicable portion thereof was terminated for default, the Contractor shall be liable to MTD for any excess costs for such Project services. *Waiver of Remedies for any Breach.* In the event that MTD elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by MTD shall not limit MTD's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement. *MTD Property.* If, at termination, the Contractor has in its possession any property, whether completed or in progress, associated with the Project belonging to MTD, the Contractor shall return such property to MTD or otherwise dispose with in the manner MTD directs.

21. Liquidated Damages. [replace clause with "Not applicable to this agreement." if appropriate] It is mutually understood and agreed by and between the parties to the Contract that time is of the essence with respect to the completion of the Project and that in case of any failure on the part of the Contractor to complete the Project within the time specified as provided in [Paragraph 10 or other applicable clause] [except for any excusable delays as provided in Paragraph XX or any extension thereof], MTD will be damaged thereby. The amount of said damages being difficult if not impossible to ascertain definitively, it is hereby agreed that the amount of such damages due MTD from the Contractor shall be fixed at [\$XXX.XX per calendar day per ?item?] not delivered in substantially acceptable condition. The Contractor hereby agrees to pay the said amounts as fixed, agreed and liquidated damages, and not by way of penalty, to MTD and further authorizes MTD to deduct the amount of the damages from money due the Contractor under this Agreement, computed as aforesaid. If the monies due the Contractor are insufficient or no monies are due the Contractor, the Contractor shall pay MTD the difference or the entire amount, whichever may be the case, within 30 calendar days after receipt of a written demand by MTD. The payment of aforesaid fixed, agreed and liquidated damages shall be in lieu of any damages for any loss of profit, loss of revenue, loss of use, or for any other direct, indirect, special or consequential losses or damages of any kind whatsoever that may be suffered by MTD arising at any time from the failure of the Contractor to fulfill the obligations referenced in this clause in a timely manner.

22. Infringement of Patents. The Contractor agrees that it will, at its own expense, defend all suits and proceedings instituted against MTD and pay any award of damages assessed against MTD in such suits or proceedings, insofar as the same are based upon any claim that the items, services, work, systems, or any part thereof, or any tool, or process used in or for the Project, constitutes an infringement of any legal United States copyright or patent. MTD agrees that it will give the Contractor prompt notice in writing of the institution of the suit or proceeding and permits the Contractor through its counsel to defend the same and gives the Contractor all information, assistance and authority necessary for the Contractor to do so. In case said items, services, work, systems, or any part thereof, or any tool, or process used in or for the Project, is in such suit held to constitute infringement and use of same is enjoined, the Contractor shall, at its own expense and at its option, either procure for the MTD the right to continue using said items, services, work, systems, or any part thereof, or any tool, or process used in or for the Project, or replace same with non-infringing equipment, or modify it so it becomes non-infringing. [replace clause with "Not applicable to this agreement." if inappropriate for contract although could keep in to CYA; if a federal contract and patent issues are applicable, keep this clause in addition to the Patent & Rights in Data clause in the FTA provisions]

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. [replace clause with "Not applicable to this agreement." if inappropriate for contract; if a federal contract and data rights are applicable, keep this clause in addition to the Patent & Rights in Data clause in the FTA provisions]

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

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

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

33. Audit and Inspection of Records. The Contractor shall agree that all materials supplied and services performed under the Project, facilities used in connection therewith, and records and documentation thereunto appertaining shall be subject to inspection, test, or audit by duly authorized representatives of MTD and the State of California.

The Contractor agrees to maintain all required records relating to the Project for at least three years after MTD makes final payment and all other pending matters are closed.

34. Equal Employment Opportunity. [If the FTA provisions are incorporated:] For applicable terms, refer to Paragraph 24 (Civil Rights Requirements) in *Federal Transit Administration: Contract Provisions for Federal Fiscal Year [????]: [Contract Type Description]* which is attached hereto as Exhibit "[?]" [otherwise:]The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and; selection for training, including apprenticeship. The Contractor shall agree to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of the above paragraph. The Contractor shall insert a similar article to the above in all subcontracts entered into in connection with the contract governing this project, except subcontracts for standard commercial supplies or raw materials.

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

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

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

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

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

SANTA BARBARA MTD

[insert contractor name in caps]

\_\_\_\_\_  
[NAME], General Manager

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date