

## ***Invitation for Bids for Traffic Control/Flagger (Rebid)***

### **SOLICITATION INSTRUCTIONS**

#### **Project Summary Sheet**

**Project Name:** Traffic Control / Flagger

**Solicitation Issuance Date:** Wednesday, March 16, 2022

**Project Description:** The Santa Barbara Metropolitan Transit District (MTD), a California special district public transit operator, is requesting bids for temporary traffic control / flagging services from a qualified company with trained personnel during upcoming construction project.

**Project Location(s):** MTD's Terminal 1 Bus Yard, 550 Olive Street, Santa Barbara, CA 93101

**Clarification/Change Request Due Date/Time:** Wednesday, March 30, 2022, at 10:00 AM PDT

**Bid Due Date/Time:** Wednesday, April 6, 2022, at 10:00 AM PDT

**Bid Due Location:** MTD Administrative Offices, 550 Olive Street, Santa Barbara, CA 93101  
(bids opened in first floor auditorium just inside building entrance)

**Bid Contents:** Price Bid; Acknowledgement of Addenda; Bidder Information; Contract Terms Certification Form; References & Suppliers; Subcontractors; Non-Collusion Declaration and Compensation Certification; Description of the Firm; Bidder and Subcontractor Certificates of Insurance; CSLB License (C-31); City of Santa Barbara Business License

**Anticipated Contract Award Date:** Wednesday, April 27, 2022

**Other Requirements:** Subject to State of California public works prevailing wage requirements

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

**Type of Contract:** Firm, Fixed Price per item

**Solicitation Contact:** Valerie White, Purchasing Agent, (805) 963-3364 x244, [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov)

Bidders shall be responsible to check MTD's website at <https://sbmtd.gov/about/doing-business/> for updates



Invitation for Bids  
for  
Traffic Control/Flagger  
(Rebid)

March 16, 2022

**Contact:**

Valerie White, Purchasing Agent  
Santa Barbara Metropolitan Transit District  
550 Olive Street, Santa Barbara, CA 93101  
(805) 963-3364, extension 244  
vwhite@sbmtd.gov

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
***Invitation for Bids for Traffic Control/Flagger (Rebid)***  
**SOLICITATION INSTRUCTIONS**

**Table of Contents**

1. PROJECT DESCRIPTION ..... 1

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

    2.1 IFB Contents & Contract Documents .....1

    2.2 Communications, Requests & Clarifications .....1

    2.3 IFB Modifications & Addenda.....2

    2.4 California Department of Industrial Relations Registration.....2

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

    3.1 Checklist.....2

    3.2 MTD Forms .....3

    3.3 Bidder-Prepared Documents .....4

    3.4 Bid Submittal & Opening.....5

    3.5 Modification or Withdrawal of Bids .....5

    3.6 Bid Stipulations .....6

4. REVIEW & AWARD ..... 6

    4.1 Bid Defects or Collusion .....6

    4.2 Responsiveness.....6

    4.3 Responsibility .....6

    4.4 Single Bid Analysis .....6

    4.5 Contract Award & Execution .....6

    4.6 Protest Procedures .....7

Attachment 1: Submittal Checklist

Attachment 2: MTD Forms & Certifications

Attachment 3: Scope of Services

Attachment 4: State of California Provisions for Public Works Projects

Attachment 5: MTD Master Agreement

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
***Invitation for Bids for Traffic Control/Flagger (Rebid)***  
**SOLICITATION INSTRUCTIONS**

**1. PROJECT DESCRIPTION**

The Santa Barbara Metropolitan Transit District (MTD), a California special district public transit operator, requires a professional traffic control service to create a safe zone as buses enter and exit during facility improvements at MTD's Terminal 1 Bus Yard in downtown Santa Barbara. Details of the requirements are contained in the attached *Scope of Services*.

Services are anticipated to be provided for approximately thirty consecutive days sometime in the first half of 2022. Specific timing will be determined by the construction schedule developed by MTD's general contractor for the aforementioned project. Such schedule has yet to be produced but is anticipated by the end of March 2022. Therefore, the quantity of work to be performed and materials to be furnished are approximations only, being provided as a basis from construction schedule estimates and/or for the comparison of bids. MTD does not guarantee that the actual amounts required will correspond with those shown. MTD may increase or decrease the amount of any item or portion of work to be performed or materials to be furnished, or MTD may omit any item or portion of work.

**2. PRE-BID SUBMITTAL ACTIVITIES**

**2.1 IFB CONTENTS & CONTRACT DOCUMENTS**

The invitation for bids (IFB) packet is available on MTD's website <https://sbmtd.gov/about/doing-business/> and is composed of the following items:

- ❑ *Solicitation Instructions* which is the document presently being read explaining bid requirements
- ❑ Various attached *Forms* to be fully completed and returned with a bid submittal
- ❑ *Scope of Services* containing the project requirements
- ❑ *State of CA Provisions for Public Works Projects* covering prevailing wage and other state requirements
- ❑ *MTD Master Agreement* which shall serve as the contract between MTD and the awarded Bidder

Bidders should be certain to read all documents in this IFB in order to prepare bids correctly and be fully aware of the contractual terms and conditions. Failure of a Bidder to follow instructions may result in rejection or disqualification of its bid, and lack of knowledge of the contract terms shall not excuse it from its obligations.

**2.2 COMMUNICATIONS, REQUESTS & CLARIFICATIONS**

All questions and communications concerning this solicitation may only be through the purchasing agent, Valerie White, via e-mail to [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov). There are no pre-bid conferences or job walks scheduled. All project work areas are visible and can be assessed from the public streets. The driveway on East Cota Street (between Olive Street and North Salispuedes Street) is the location identified in the *Scope of Services* requiring traffic management.

Bidders may request a site tour, clarification, a change, or an approved equal to any aspect or requirement of the IFB, or any addenda thereto. If MTD elects to accept the request, all Bidders shall be notified through written addenda. Only addenda issued by MTD are binding upon this solicitation. All requests must be e-mailed to [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov) by Wednesday, March 30, 2022, at 10:00 AM (local time) to be considered.

### 2.3 IFB MODIFICATIONS & ADDENDA

MTD reserves the right to amend this IFB at any time. Based upon questions, requests, or comments received, MTD may modify the IFB if in its best interests to do so. Any such changes shall be provided through formal written addenda. No other forms of communication with any officer, employee, or agent of MTD with respect to the IFB shall be binding on MTD. Addenda shall be posted to the MTD website at <http://www.sbmtd.gov/about/doing-business/> and concurrently sent via e-mail to all parties known to have received the IFB. Failure of a Bidder to receive any addendum shall not relieve it from any obligation under its bid or under the IFB as clarified or modified.

### 2.4 CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION REQUIREMENT

The California Labor Code requires the following pertaining to bidding on or contracting to perform work on public works projects:

- Contractors and subcontractors must be registered with the California Department of Industrial Relations (DIR) to:
  - Bid or be listed on a bid for a public works contract.
  - Perform public work under Labor Code section 1720.

Contractor registration requirements apply to all public works projects, as defined in the Labor Code, and all work performed on these projects are subject to prevailing wage requirements under the Labor Code. Copies of the prevailing rate of per diem wages are on file at MTD and shall be made available to any interested party on request. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

More information about the applicable rules and procedures, including those listed above, may be found at <https://www.dir.ca.gov/Public-Works/PublicWorks.html>. **Failure of a Bidder and its subcontractors to be properly registered with DIR and showing in the DIR database at the time of bid opening will render its bid non-responsive, and it will be rejected in accordance with DIR regulations.**

## 3. BID PREPARATION & SUBMITTAL

The Bidder's submittal shall include two types of information: Bidder-completed forms provided by MTD and Bidder-prepared documents. The forms must be signed by a company official authorized to bind the Bidder contractually. Failure to provide all required information in the bid, including fully and accurately completed forms, may result in the rejection or disqualification of the bid.

### 3.1 CHECKLIST

To ensure all required bid submittal documents are included, a Submittal Checklist is attached. Please do not include this checklist in your submittal. The Bid contents of the Submittal Checklist are further detailed in the paragraphs below. The checklist includes the following:

- ❑ Price Bid
- ❑ Acknowledgement of Addenda
- ❑ Bidder Information
- ❑ Contract Terms Certification Form
- ❑ References & Suppliers
- ❑ Subcontractors
- ❑ Non-Collusion Declaration and Compensation Certification
- ❑ Description of the Firm
- ❑ Bidder and Subcontractor Certificates of Insurance
- ❑ CSLB License (C-31)
- ❑ City of Santa Barbara Business License

### 3.2 MTD FORMS

Price Bid—Bid shall include the fully completed and signed *Price Bid* form included in this IFB stating the total compensation for each service to be rendered under the terms of the contract. Do not include the cost of any local agency permits in the price bid as if they become necessary MTD will pay them directly to the City of Santa Barbara or will reimburse the Contractor, whichever is applicable at the time. **Failure to include the fully completed and signed Price Bid form will render the bid non-responsive and it will be rejected.** If revised *Price Bid* forms were issued as part of the addenda, the most recent version must be used or the bid will be considered non-responsive and will be rejected.

Acknowledgment of Addenda—Bidder shall acknowledge either the receipt of each addendum or that there were no addenda by including in its bid the fully completed and signed *Acknowledgement of Addenda* form included in this IFB. **Failure to include the signed Acknowledgement of Addenda form may render the bid nonresponsive resulting in its rejection.**

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

Contract Terms Certification Form—Provide the signed and dated Contract Terms Certifications form indicating that the Bidder acknowledges and is willingness to accept the requirements of the project as described in the *MTD Master Agreement, State of CA Provisions for Public Works Projects, and Scope of Services*.

References & Suppliers—Submittal shall include the completed *References & Suppliers* form. Please be certain to list contact information that is accurate and current. At least three work references shall include projects similar to that described in *Scope of Services* to the extent feasible. Public agency organizational references should be provided whenever possible. Any significant suppliers should also be included.

Subcontractors— Submittal shall include a completed *Subcontractors* form. All subcontractors who will be involved in this project and meet the criteria stated on the form must also be listed.

Bidders must submit with bid:

- Subcontractor Name
- Subcontractor Telephone Number
- Craft
- California Contractor's License Number
- License Class
- License Expiration
- DIR Registration Number
- DIR Expiration

The remaining subcontractor information (Business Address, E-mail Address, Portion of Work, Vendor Type, Amount of Work, and Description of Services and Activities to be Performed) must be submitted with bid or within 24 hours of bid for each subcontractor listed on the *Subcontractors* form submitted with their bid. Subcontractor forms shall be accepted via email to [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov). **Failure of a bidder to submit the remaining subcontractor information on a separate and new *Subcontractors* form within 24 hours of bid due date/time will render its bid non-responsive, and it will be rejected.**

Non-Collusion Declaration and Compensation Certification—Submittal shall include the fully completed and signed *Non-Collusion Declaration and Compensation Certification* form. The declaration and certification are required on the basis of the usage of California state funding for the project.

### 3.3 BIDDER-PREPARED DOCUMENTS

Description of the Firm—**The Bidder, as Prime Contractor, must have a minimum of two years of experience with traffic control services.** Provide a brief description of the bidding firm including its line(s) of business, years in business, size, location(s), and any other information deemed appropriate for providing a general overall picture of the firm.

Certificates of Insurance—**Bid must include current certificates of insurance for the Bidder and its proposed subcontractors** showing evidence of insurance meeting the minimum coverage stipulated in paragraph 18 of the *MTD Master Agreement*. Subcontractor evidence of insurance may be provided within 24 hours after bid opening via email from the Prime Bidder to [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov). **Failure to provide evidence of insurance may render the bid non-responsive and it will be rejected.**

If MTD is requiring greater coverage than currently held by a party, then agent or broker shall provide written indication that the additional coverage can be obtained for the project. If awarded the contract for the project, the Bidder shall be required to provide revised certificates of insurance showing the required coverage for the Bidder and its subcontractors.

Contractor's License—**Bid must include a photocopy of Bidder's current and valid contractor's license issued by the California State License Board (CSLB).** The C-31 license is the classification required in the state of California for Construction Zone Traffic Control projects.

Business License—To carry out the project within Santa Barbara, including pick-up of any permits, a City of Santa Barbara business license is required. **Provide a photocopy of the Bidder's City business license** or, if one is not currently held, an indication with the bid that it will be obtained and a copy provided prior to award. More information about the business license requirements and application process may be found at <http://www.santabarbaraca.gov/business/license/>.

### 3.4 BID SUBMITTAL & OPENING

One (1) original print and one (1) electronic copy of the bid shall be submitted. One original hard copy of the bid shall be submitted in a non-transparent, sealed envelope or appropriate packaging plainly marked on the exterior with the name of the Bidder and "IFB – Traffic Control/Flagger (Rebid)".

Bidders shall also provide a digital copy of their bid submittal via a flash drive or utilizing the file hosting service DropBox and notating the link /web address within the sealed envelope with any passcodes necessary to access the file. Original bid submittals may not be e-mailed.

Sealed bids shall be addressed and delivered to:

Santa Barbara Metropolitan Transit District  
**IFB – Traffic Control/Flagger (Rebid)**  
550 Olive Street  
Santa Barbara, CA 93101

- If using US Mail or delivery service, bids must still be enclosed in the specified packaging within any delivery service packaging.
- Hand-delivered sealed bids shall be accepted by appointment. Due to COVID-19, MTD administrative offices are currently closed to the public. Deliveries can be accepted at 550 Olive Street by pre-arranging a delivery time Monday through Friday, from 8:00 AM - 5:00 PM (local time), by first calling 805-963-3364 ext. 200.

**Bids will only be accepted until Wednesday, April 6, 2022, at 10:00 AM (local time).**

Immediately following the submission deadline, bids will be opened and read aloud at an open public meeting in the Administrative Building's first-floor auditorium. No appointment is necessary to attend the bid-opening, and bids shall be accepted without an appointment within the 15 minutes prior to bid-opening.

Following any federal, state, and local COVID-19 protocols, anyone planning on attending the bid opening should arrive 15 minutes early as they may be subject to a health screening and other guidance. Face masks may be required. Unless due to the fault of MTD, bids received after the bid submission deadline will not be considered.

**Submittal of Subcontractor Additional Information**—MTD shall allow the Bidder up to 24 hours after bid opening to furnish the additional information concerning listed subcontractors' and the subcontractors' evidence of satisfactory insurance coverage. Subcontractor information shall only be accepted from the Prime Bidder. Submittals of the additional information shall be accepted via email with the "IFB-Traffic Control/IFB (Rebid)" in the subject line to [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov). **Failure to submit full subcontractor documentation by Thursday, April 7, 2022, at 10:00 AM (local time) may render the bid non-responsive, and it may be rejected.**

### 3.5 MODIFICATION OR WITHDRAWAL OF BIDS

A Bidder may modify or withdraw a submitted bid any time prior to the bid submittal deadline by sending an e-mail request from the Bidder's authorized representative to [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov). The withdrawal of a bid prior to the bid submission deadline does not prejudice the right of a Bidder to resubmit a bid by the deadline. After the bid submission deadline, a bid may be withdrawn only if MTD fails to award the contract within the validity period stipulated on the *Price Bid* form or any agreed-upon extension thereof.



### **3.6 BID STIPULATIONS**

Bids received by MTD become the property of MTD. MTD will not pay any cost incurred by Bidder resulting from the preparation or delivery of its bid. MTD reserves the sole right to review, accept, or reject bids; or to cancel this solicitation in whole or in part if it is in MTD's best interest to do so. Bids submitted shall remain valid for 90 calendar days.

## **4. REVIEW & AWARD**

### **4.1 BID DEFECTS OR COLLUSION**

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

### **4.2 RESPONSIVENESS**

MTD shall examine the low bid to determine its completeness and responsiveness to this solicitation. MTD may request additional or clarifying information from a Bidder. Bids that do not contain all required materials, information, or forms; or where such items are substantially incomplete, may be determined as non-responsive and rejected by MTD. In such a case, the process shall continue until such time as the low responsive Bidder is determined.

### **4.3 RESPONSIBILITY**

MTD shall assess the low responsive Bidder's "responsibility." For purposes of this solicitation, responsibility is defined as satisfactory performance in previous contracts and having the technical capacity to undertake the project.

MTD shall primarily use the work references and insurance information in the bid for this initial determination. However, MTD may at its own discretion seek and utilize other information within and outside of the bid to assist in the determination. Such process may involve requesting additional or clarifying information from a Bidder. The bid of a Bidder not found to be responsible shall be rejected. In such a case, the process shall continue until such time as the low responsive and responsible Bidder is determined.

### **4.4 SINGLE BID ANALYSIS**

If only one bid is received in response to this solicitation, a price analysis and/or cost analysis of the bid may be required to determine if the price is fair and reasonable. Any such analyses do not obligate MTD to accept such a single bid.

### **4.5 CONTRACT AWARD & EXECUTION**

If considered in MTD's best interest MTD staff will recommend to the General Manager that a contract be awarded to the responsive and responsible Bidder providing the lowest overall bid.

It is anticipated that an award decision shall be made by Wednesday, April 27, 2022. If approved, MTD shall issue a “Notification of Contingent Award” which indicates MTD’s intent to award a contract upon receipt of the following:

- Insurance Certificate—Certificate(s) of insurance showing the coverage types and dollar limits required in the *MTD Master Agreement* in paragraph 18. Contractor shall have its insurance broker/agent provide MTD with the certificates as only documents from a licensed insurance professional shall be accepted.
- Business License—A copy of the firm’s City of Santa Barbara business license if it was not provided with the bid.

The contract shall be executed upon receipt of required documents within ten (10) calendar days of the Notification of Contingent Award. The contract shall include the *MTD Master Agreement, State of CA Provisions for Public Works Projects, Scope of Services* and relevant portions of the bid and post-award submittals. Notice to Proceed shall be issued upon execution of the contract.

#### **4.6 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 <http://www.sbmtd.gov/about/doing-business/>.

**End of Solicitation Instructions Text (Also See Attachments 1-5)**

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
***Invitation for Bids for Traffic Control/Flagger (Rebid)***  
**SUBMITTAL CHECKLIST**

The Checklist is an aid for completing the requirements of this IFB. It does not substitute for any provision or obligation in the *Solicitation Instructions* or the terms and conditions in the attachments. In the event of any conflict between this Checklist and the aforementioned documents, the latter shall control over the Checklist.

**Important Dates:**

- Email [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov) any requests and clarifications by Wednesday, March 30, 2022, at 10:00 AM
- Email [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov) all bid documents by Wednesday April 6, 2022, at 10:00 AM

**Required Pre-Qualification Documents:**

- Price Bid
- Acknowledgement of Addenda
- Bidder Information
- Contract Terms Certification Form
- References & Suppliers
- Subcontractors
- Non-Collusion Declaration and Compensation Certification
- Description of the Firm
  - Provide a description of your company including its line(s) of business, size, location(s), years in business, and other information to allow MTD to determine the capacity of the interested vendor to successfully undertake the project. If a large entity, information on the division of the firm that would be responsible for the project should be emphasized.
- Bidder and Subcontractor Certificates of Insurance
  - Provide a Certificate of Liability Insurance listing policy coverages currently in effect.
- CSLB License (C-31)
  - Provide a copy of C-31 Contractor's License.
- City of Santa Barbara Business License
  - Provide a copy of current Business License or evidence of the ability to obtain license.

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
**Invitation for Bids for Traffic Control/Flagger (Rebid)**  
**PRICE BID**

Column 1 Item Description	Column 2 Fixed Fee <i>Figures in column 2 are final as is.</i>	Column 3 Estimated Need (Quantity)	Column 4 Calculation <i>Multiply amount in column 2 by column 3</i>
<b>Full-day (8 hrs) Charge: (\$/day)</b> <i>Sunday-Saturday (7 days a week); 6:00–10:00AM, 2:00– 6:00PM Service workers subject to prevailing wages</i>	\$	30 days	\$
<b>Holiday Full-Day (8 hrs) Charge: (\$/day)</b> <i>When work day occurs on one of the 11 Observed Federal Holidays</i>	\$	1 day	\$
<b>Over-time (&gt;8hrs) Charge: (\$/hr)</b>	\$	6 hours	\$
<b>Cancellation Charge (&lt;8hrs Notice): (\$)</b>	\$	1 occurrence	\$
<b>Emergency Service Charge (\$/hr)</b> <i>Emergency Service occurs when provided &lt;72hrs notice</i>	\$	4 hours	\$
<b>Daily Equipment-Supplies Rate (\$/day)</b> <i>safety equipment to support the service; including any set up (do not duplicate labor cost(s) from bid/charges listed above)</i>	\$	30 days	\$
<b>Planning (\$/hr)</b> <i>Traffic Control Plan Drawings and Meetings with MTD Manager</i>	\$	10 hours	\$
			<i>Add all column 4 items above, place total in the row below.</i>
<b>GRAND TOTAL</b> <i>Base Bid</i>			\$

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, supplies, material, or equipment called for in carrying out the project.
2. The Fixed Fee in Column 2 is the total set forth for a unit basis item; this fixed fee unit price shall prevail in the case of any discrepancies between the unit price and any calculated total. The Estimated Need identified in Column 3 are estimates only and are given as a basis for comparison of bids; no guarantee is made or implied as to the exact quantity/need that will be assigned. Bid award shall be based on the total of the calculations in Column 4; this is identified as the Grand Total and is accepted by MTD as the Bidder's Base Bid.
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 (do **not** include the cost of local agency permits).
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 is valid for 90 calendar days following the bid due date.
6. It is understood and agreed that MTD reserves the right to reject any or all bids if, in MTD's sole discretion, that is believed by MTD to be in its best interests. MTD also reserves the right to waive any informality or irregularity in any bid received and to be the sole judge of the merits of the bid(s) received. MTD's potential contract award, if any is made, will be made to the lowest responsive, responsible Bidder.

\_\_\_\_\_  
Authorized Official Signature

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Authorized Official Name

\_\_\_\_\_  
Authorized Official Title

\_\_\_\_\_  
Business Name of Bidder

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

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
***Invitation for Bids for Traffic Control/Flagger (Rebid)***  
**ACKNOWLEDGEMENT OF ADDENDA**

The undersigned acknowledges the Bidder's receipt of the following addenda to this IFB and has incorporated information or changes in said addenda within its 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 Bidder'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**  
***Invitation for Bids for Traffic Control/Flagger (Rebid)***  
***BIDDER INFORMATION FORM***

**General Information**

Business Name of Bidder: \_\_\_\_\_

Business Type:     Corporation (State of Incorporation: \_\_\_\_\_ )                       Partnership  
                          Sole Proprietorship     Other: \_\_\_\_\_

Special Business Designations (DBE, MBE, WBE, etc): \_\_\_\_\_

Business Federal Tax ID Number: \_\_\_\_\_ DUNS Number (if have one): \_\_\_\_\_

DIR Registration Number: \_\_\_\_\_ DIR Expiration: \_\_\_\_\_

CA Contractor License Number: \_\_\_\_\_ CA Contractor License Class: \_\_\_\_\_

CA Contractor License Expiration: \_\_\_\_\_

**Corporate Headquarters**

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

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

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

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

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Location:     HQ             Local Office             Other: \_\_\_\_\_

Telephone: \_\_\_\_\_ Cell: \_\_\_\_\_ E-Mail: \_\_\_\_\_

**Project Manager** (primary contact during project implementation)

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Location:     HQ             Local Office             Other: \_\_\_\_\_

Telephone: \_\_\_\_\_ Cell: \_\_\_\_\_ E-Mail: \_\_\_\_\_

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
***Invitation for Bids for Traffic Control/Flagger (Rebid)***  
**CONTRACT TERMS CERTIFICATION**

Bidder certifies that it:

1. Has read, understands, and agrees to the terms and conditions of this solicitation and any ensuing contract that it is awarded as a result of this solicitation. Such documents include the *Solicitation Instructions*, *Scope of Services*, *State of California Provisions for Public Works Projects*, *MTD Master Agreement*, and any other documents, terms, or conditions cited within them. **MTD will not negotiate or modify contractual terms and conditions unless it is in its best interest to do so.**
2. Has the ability and willingness to obtain insurance meeting the requirements indicated in paragraph 18 of the *Master Agreement* and that a Certificate of Liability Insurance and endorsements meeting such requirements must be provided to MTD prior to contract implementation.

\_\_\_\_\_  
Authorized Official Signature

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Authorized Official Name

\_\_\_\_\_  
Authorized Official Title

\_\_\_\_\_  
Business Name of Bidder

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

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
**Invitation for Bids for Traffic Control/Flagger (Rebid)**  
**REFERENCES & SUPPLIERS**

Business Name of Bidder: \_\_\_\_\_

---

***Credit References***

Include your primary bank and a firm 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: \_\_\_\_\_

---

***Work References***

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

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: \_\_\_\_\_

---

***Suppliers***

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

Firm Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Contact Phone: \_\_\_\_\_ Contact E-Mail: \_\_\_\_\_

Description of Work: \_\_\_\_\_

---

Firm Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Contact Phone: \_\_\_\_\_ Contact E-Mail: \_\_\_\_\_

Description of Work: \_\_\_\_\_

---

Firm Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Contact Phone: \_\_\_\_\_ Contact E-Mail: \_\_\_\_\_

Description of Work: \_\_\_\_\_

---



**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
**Invitation for Bids for Traffic Control/Flagger (Rebid)**  
**SUBCONTRACTORS**

Business Name of Bidder: \_\_\_\_\_

---

***Subcontractors***

Pursuant to the provisions of Sections 4100 to 4114 inclusive, of the California Public Contracting Code, every Bidder shall in his bid set forth the portion of work that will be done by each subcontractor. If the Bidder fails to specify a subcontractor for any portion of work to be performed under Contract in excess of one half (1/2) of one percent (1%) of the Bidder's total bid, he agrees to perform that portion with his own workforce.

Complete this form to list subcontractors for any portion of work to be performed under Contract in excess of one half (1/2) of one percent (1%) of the Bidder's total bid and provide other requested information.

Subcontractor Name: \_\_\_\_\_ Craft: \_\_\_\_\_

Amount of Work: \$ \_\_\_\_\_ Portion of Work \_\_\_\_\_ %

Location/Address: \_\_\_\_\_

Contact Phone: \_\_\_\_\_ Contact E-Mail: \_\_\_\_\_

Special Business Designations (DBE, MBE, WBE, etc): \_\_\_\_\_

Business Federal Tax ID Number: \_\_\_\_\_ DUNS Number (if have one): \_\_\_\_\_

DIR Registration Number: \_\_\_\_\_ DIR Expiration: \_\_\_\_\_

CA Contractor License Number: \_\_\_\_\_ CA Contractor License Expiration: \_\_\_\_\_

CA Contractor License Class: \_\_\_\_\_

Description of Work: \_\_\_\_\_

---

Subcontractor Name: \_\_\_\_\_ Craft: \_\_\_\_\_

Amount of Work: \$ \_\_\_\_\_ Portion of Work \_\_\_\_\_ %

Location/Address: \_\_\_\_\_

Contact Phone: \_\_\_\_\_ Contact E-Mail: \_\_\_\_\_

Special Business Designations (DBE, MBE, WBE, etc): \_\_\_\_\_

Business Federal Tax ID Number: \_\_\_\_\_ DUNS Number (if have one): \_\_\_\_\_

DIR Registration Number: \_\_\_\_\_ DIR Expiration: \_\_\_\_\_

CA Contractor License Number: \_\_\_\_\_ CA Contractor License Expiration: \_\_\_\_\_

CA Contractor License Class: \_\_\_\_\_

Description of Work: \_\_\_\_\_

---

*If more space is needed, this page may be copied and additional subcontractors listed.*

March 16, 2022

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
**Invitation for Bids for Traffic Control/Flagger (Rebid)**  
**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**  
***Invitation for Bids for Traffic Control / Flagger (Rebid)***  
**SCOPE OF SERVICES**

**I. BACKGROUND**

As a result of upcoming facility improvements at the Santa Barbara Metropolitan Transit District' (MTD) Terminal 1 bus yard, MTD's fleet of 30'-60' transit buses will be required to use an alternate driveway. Buses will have to exit onto Cota Street (as opposed to Salsipuedes Street), which is a narrow, two-lane street with a high volume of fast-moving vehicle, pedestrian, and bicycle traffic. The foregoing roadway/traffic conditions combined with the wide turns of the bus creates the need for a 'safe zone' that ensures traffic is alerted to bus movement and enables the buses to safely and efficiently pull out of the yard. Thus, MTD is seeking a traffic control services contractor. The service will be temporary and is only required during peak bus departure times. It may also require setting-up and removing temporary traffic control equipment like cones and signage.

The amount of traffic control to be performed and materials to be furnished are approximations only. They are being provided as a basis for bid evaluations. MTD does not guarantee that the actual amount of work required will correspond with that described herein. MTD reserves the right to modify or eliminate any portion of work to be performed or materials to be furnished.

The project work and traffic control activities are related to a public works project. Anyone working on a public works project must be paid prevailing wages as required by the California Department of Industrial Relations. Failure to comply with public works requirements may result in civil penalties, criminal prosecution, or both.

**II. LOCATION OF SERVICE**

MTD's Terminal 1 Bus Yard  
550 Olive Street  
Santa Barbara, CA 93101

Terminal 1 Description: MTD performs administrative, dispatch, operations, and maintenance functions at its property in downtown Santa Barbara. Terminal 1 is also the bus yard, providing parking for MTD's 112 revenue vehicles (transit buses ranging from 30'-60') and 23 non-revenue vehicles (trucks and sedans). The facility supports 200+ employees ranging from bus operators, mechanics and utility staff, operations supervisors, customer service representatives, and administrative staff.

The property is bordered by four streets, Olive (employee and guest entrance to the Administration building), Haley (bus entry into the yard), Cota (temporary bus exit from the yard during construction), and Salsipuedes (typical bus exit from the yard that will be closed due to construction). During the performance of their work, the traffic control crew will be provided access to onsite shaded picnic tables. The provision and servicing of a portable restroom including all related costs is the responsibility of the traffic control contractor. The portable restroom must be serviced at a regular interval in accordance with industry standards and supplier recommendations. If MTD determines that the portable restroom is not being managed properly, MTD reserves the right to assume such responsibility and bill the traffic control contractor for related expenses. MTD will work with the traffic control provider to identify a suitable location for the portable restroom within the Terminal 1 property.

Specific Location of Traffic Control: Traffic control services are to be performed at the driveway on Cota Street at MTD's Terminal 1 facility.

### III. SCHEDULE

Traffic control will be required each day of the week during the following:

Sunday-Saturday

6:00 AM – 10:00 AM

2:00 PM – 6:00 PM

The total number of days traffic control will be needed is contingent upon the length of time the Salsipuedes Street driveway exit will be closed due to the aforementioned construction. A more definitive traffic control schedule will be provided when MTD receives the project schedule from the general contractor selected to perform the construction. Based upon estimates from the project architect, driveway closure will last about 30 days (amount of time traffic control at Cota Street is required).

It is anticipated that traffic control services will be needed in two, four-hour blocks (6:00 AM – 10:00 AM and 2:00 PM – 6:00 PM) every day throughout the 30-day driveway closure, including weekends and holidays. For bidding purposes, 'holidays' are any of the 11 observed federal holidays. Note, the foregoing is subject to change based upon the construction schedule. A formal schedule will be provided during issuance of a contract and will be amended as needed during construction with 72-hour notice.

The traffic control services provided under this *Scope of Services* shall include being on call for Emergency Service between the hours of 6:00 AM and 7:00 PM. Emergency Service is defined as any request by MTD's Designated Representative outside of the agreed-upon schedule, and with less than 72-hour notice. MTD shall pay a four-hour minimum (if the time exceeds four hours in a day the contractor shall bill MTD for the actual number of hours service was provided) for Emergency Service and the hourly rate billed by the contractor shall not exceed 1.5 times the standard rate. Should MTD elect to cancel service for a particular day, MTD will provide notice to the traffic control contractor in writing no fewer than 8 hours from the scheduled start time.

### IV. SERVICE TASKS & STANDARDS

- Flaggers shall be trained by persons with the qualifications and experience necessary to effectively instruct the employee in the proper fundamentals of flagging fast-moving vehicle, pedestrian, and bicycle traffic. Documentation of such training occurring in the last three years must be made available to MTD upon request.
- In the event the authority having jurisdiction (AHJ) requires a permit for traffic control services furnished under this *Scope of Services*, the traffic control contractor shall be capable and responsible for the provision of requisite forms and information to satisfy the AHJ's requirements and obtain a permit. The labor rate for such work shall be listed under the "Planning" row of the *Price Bid* form and any expenses incurred shall be reimbursed by MTD.
- Flaggers must be aware of their traffic control responsibilities and demonstrate safe and expeditious vehicular traffic movement. Flaggers shall face on-coming lanes of moving traffic at all times.
- The traffic control service provider shall supply flaggers with stop/slow signs, and all safety equipment deemed necessary and required (cones, signs, barriers, etc.). The provider shall also be responsible for setting up and removing any such temporary safety equipment each day. The daily fee for such equipment and set-up labor shall be listed under the "Daily Equipment Supplies" row of the *Price Bid* form.
- Flaggers must be dressed in a neat and presentable manner that will distinguish them as professional technicians. High-visibility vests with fluorescent stripes and steel-toed safety footwear are required

and the responsibility of the traffic control services provider. All traffic control crew members that enter MTD's property must adhere to MTD's COVID-19 policies, which may include wearing face masks indoors.

- Flaggers shall be able to communicate clearly and effectively with public safety officials, MTD, and the traveling public. Flaggers shall be courteous but firm in their direction and professional in conducting their activities.
- Unsafe or irresponsible behavior not adhering to MTD's *Scope of Services* will be cause for removal from the job site. If a flagger is removed, a replacement flagger must be provided by the traffic control services contractor within two hours at no additional cost to MTD. No cell phones for entertainment (music, videos, games) nor umbrellas or chairs will be permitted at the flagging site.

## **V. POINT OF CONTACT**

Any requests by MTD will be made by MTD's Designated Representative. The Designated Representative's contact information shall be provided to the traffic control services contractor at the time a Notice to Proceed is issued. MTD employees other than the Designated Representative are not authorized to make any service requests directly to the traffic control services contractor; MTD will not pay for services resulting from unauthorized requests.

The traffic control services contractor shall provide MTD's Designated Representative with a Project Manager who will be MTD's primary point of contact throughout the contract term. The traffic control services contractor's Project Manager shall be available to respond to MTD's calls within four business hours; and fulfill MTD service or equipment requests within 24 hours.

## **VI. ACCOUNTING**

All work performed shall be completed in a competent manner according to standard practices of the industry. The traffic control services contractor shall accurately track and invoice services and equipment provided. Note: MTD will not compensate for travel time; MTD will only compensate time contractor is onsite performing the work.

**End of Scope of Services Text**

**Santa Barbara Metropolitan Transit District**  
**State of California Provisions For Public Works Projects**  
**Last Updated January 24, 2022**

The following terms and conditions of the California Public Contract Code and the California Labor Code are incorporated into the agreement between the Santa Barbara Metropolitan Transit District (MTD) and the Contractor. In the provisions that follow, “public agency,” “awarding authority,” or similar terms other than “city,” “county,” or “state” shall be the equivalent of using the term “MTD;” and “prime contractor” or similar terms other than “subcontractor” shall be the equivalent to using “Contractor.”

**Public Contract Code Provisions**

[§4103 \(Rights Limitations\)](#). Nothing in this chapter limits or diminishes any rights or remedies, either legal or equitable, which:

(a) An original or substituted subcontractor may have against the prime contractor, his or her successors or assigns.

(b) The state or any county, city, body politic, or public agency may have against the prime contractor, his or her successors or assigns, including the right to take over and complete the contract.

[§4104 \(Subcontractor Listing\)](#). Any officer, department, board, or commission taking bids for the construction of any public work or improvement shall provide in the specifications prepared for the work or improvement or in the general conditions under which bids will be received for the doing of the work incident to the public work or improvement that any person making a bid or offer to perform the work, shall, in his or her bid or offer, set forth:

(a) (1) The name, the location of the place of business, the California contractor license number, and public works contractor registration number issued pursuant to Section 1725.5 of the Labor Code of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor’s total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor’s total bid or ten thousand dollars (\$10,000), whichever is greater.

(2) An inadvertent error in listing the California contractor license number or public works contractor registration number provided pursuant to paragraph (1) shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive if the corrected contractor’s license number is submitted to the public entity by the prime contractor within 24 hours after the bid opening and provided the corrected contractor’s license number corresponds to the submitted name and location for that subcontractor.

(3) (A) Subject to subparagraph (B), any information requested by the officer, department, board, or commission concerning any subcontractor who the prime contractor is required to list under this subdivision, other than the subcontractor’s name, location of business, the California contractor license number, and the public works contractor registration number, may be submitted by the prime contractor up to 24 hours after the deadline established by the officer, department, board, or commission for receipt of bids by prime contractors.

(B) A state or local agency may implement subparagraph (A) at its option.

(b) The portion of the work that will be done by each subcontractor under this act. The prime contractor shall list only one subcontractor for each portion as is defined by the prime contractor in his or her bid.

[§4104.5 \(Receipt of Bids\)](#). (a) The officer, department, board, or commission taking bids for construction of any public work or improvement shall specify in the bid invitation and public notice the place the bids of the prime contractors are to be received and the time by which they shall be received. The date and time shall be extended by no less than 72 hours if the officer, department, board, or commission issues any material changes, additions, or deletions to the invitation later than 72 hours prior to the bid closing. Any bids received after the time specified in the notice or any extension due to material changes shall be returned unopened.

(b) As used in this section, the term “material change” means a change with a substantial cost impact on the total bid as determined by the awarding agency.

(c) As used in this section, the term “bid invitation” shall include any documents issued to prime contractors that contain descriptions of the work to be bid or the content, form, or manner of submission of bids by bidders.

[§4105 \(Subcontractor Listing Circumvention\)](#). Circumvention by a general contractor who bids as a prime contractor of the requirement under Section 4104 for him or her to list his or her subcontractors, by the device of listing another contractor who will in turn sublet portions constituting the majority of the work covered by the prime contract, shall be considered a violation of this chapter and shall subject that prime contractor to the penalties set forth in Sections 4110 and 4111.

[§4106 \(Contractor Work Qualification\)](#). If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor’s total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself.

If after award of contract, the prime contractor subcontracts, except as provided for in Sections 4107 or 4109, any such portion of the work, the prime contractor shall be subject to the penalties named in Section 4111.

[§4107 \(Subcontractor Substitution\)](#). A prime contractor whose bid is accepted may not:

(a) Substitute a person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority, or its duly authorized officer, may, except as otherwise provided in Section 4107.5, consent to the substitution of another person as a subcontractor in any of the following situations:

(1) When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor’s bid and at the price specified in the subcontractor’s bid, when that written contract, based upon the general terms, conditions, plans, and specifications for the project involved or the terms of that subcontractor’s written bid, is presented to the subcontractor by the prime contractor.

(2) When the listed subcontractor becomes insolvent or the subject of an order for relief in bankruptcy.

(3) When the listed subcontractor fails or refuses to perform his or her subcontract.

(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108.

(5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.

(6) When the listed subcontractor is not licensed pursuant to the Contractors License Law.

(7) When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.

(8) When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

(9) When the awarding authority determines that a listed subcontractor is not a responsible contractor.

Prior to approval of the prime contractor’s request for the substitution, the awarding authority, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor’s request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified has five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections constitutes the listed subcontractor’s consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding authority on the prime contractor’s request for substitution.

(b) Permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the awarding authority, or its duly authorized officer.

(c) Other than in the performance of “change orders” causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor’s total bid as to which his or her original bid did not designate a subcontractor.

[§4107.2 \(Carpet Subcontractor\)](#). No subcontractor listed by a prime contractor under Section 4104 as furnishing and installing carpeting, shall voluntarily sublet his or her subcontract with respect to any portion of the labor to be performed unless he or she specified the subcontractor in his or her bid for that subcontract to the prime contractor.

[§4107.5 \(Subcontractor Listing Error\)](#). The prime contractor as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor shall within two working days after the time of the prime bid opening by the awarding authority give written notice to the awarding authority and copies of that notice to both the subcontractor he or she claims to have listed in error and the intended subcontractor who had bid to the prime contractor prior to bid opening.

Any listed subcontractor who has been notified by the prime contractor in accordance with this section as to an inadvertent clerical error shall be allowed six working days from the time of the prime bid opening within which to submit to the awarding authority and to the prime contractor written objection to the prime contractor’s claim of inadvertent clerical error. Failure of the listed subcontractor to file the written notice within the six working days shall be primary evidence of his or her agreement that an inadvertent clerical error was made.

The awarding authority shall, after a public hearing as provided in Section 4107 and in the absence of compelling reasons to the contrary, consent to the substitution of the intended subcontractor:

(a) If (1) the prime contractor, (2) the subcontractor listed in error, and (3) the intended subcontractor each submit an affidavit to the awarding authority along with such additional evidence as the parties may wish to submit that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within eight working days from the time of the prime bid opening, or

(b) If the affidavits are filed by both the prime contractor and the intended subcontractor within the specified time but the subcontractor whom the prime contractor claims to have listed in error does not submit within six working days, to the awarding authority and to the prime contractor, written objection to the prime contractor’s claim of inadvertent clerical error as provided in this section.

If the affidavits are filed by both the prime contractor and the intended subcontractor but the listed subcontractor has, within six working days from the time of the prime bid opening, submitted to the awarding authority and to the prime contractor written objection to the prime contractor’s claim of inadvertent clerical error, the awarding authority shall investigate the claims of the parties and shall hold a public hearing as provided in Section 4107 to determine the validity of those claims. Any determination made shall be based on the facts contained in the declarations submitted under penalty of perjury by all three parties and supported by testimony under oath and subject to cross-examination. The awarding authority may, on its own motion or that of any other party, admit testimony of other contractors, any bid registries or depositories, or any other party in possession of facts which may have a bearing on the decision of the awarding authority.

[§4107.7 \(Hazmat Subcontractors\)](#). If a contractor who enters into a contract with a public entity for investigation, removal or remedial action, or disposal relative to the release or presence of a hazardous material or hazardous waste fails to pay a subcontractor registered as a hazardous waste hauler pursuant to Section 25163 of the Health and Safety Code within 10 days after the investigation, removal or remedial action, or disposal is completed, the subcontractor may serve a stop notice upon the public entity in accordance with Chapter 4 (commencing with Section 9350) of Title 3 of Part 6 of Division 4 of the Civil Code.

[§4108 \(Subcontractor Bonding\)](#). (a) It shall be the responsibility of each subcontractor submitting bids to a prime contractor to be prepared to submit a faithful performance and payment bond or bonds if so requested by the prime contractor.

(b) In the event any subcontractor submitting a bid to a prime contractor does not, upon the request of the prime contractor and at the expense of the prime contractor at the established charge or premium therefor, furnish to the prime contractor a bond or bonds issued by an admitted surety wherein the prime contractor shall be named the obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for



labor and materials furnished or used in and about the work to be done and performed under the subcontract, the prime contractor may reject the bid and make a substitution of another subcontractor subject to Section 4107.

(c) (1) The bond or bonds may be required under this section only if the prime contractor in his or her written or published request for subbids clearly specifies the amount and requirements of the bond or bonds.

(2) If the expense of the bond or bonds required under this section is to be borne by the subcontractor, that requirement shall also be specified in the prime contractor's written or published request for subbids.

(3) The prime contractor's failure to specify bond requirements, in accordance with this subdivision, in the written or published request for subbids shall preclude the prime contractor from imposing bond requirements under this section.

[§4109 \(Emergency Subcontracting\)](#). Subletting or subcontracting of any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the awarding authority setting forth the facts constituting the emergency or necessity.

[§4110 \(Contractor Violations\)](#). A prime contractor violating any of the provisions of this chapter violates his or her contract and the awarding authority may exercise the option, in its own discretion, of (1) canceling his or her contract or (2) assessing the prime contractor a penalty in an amount of not more than 10 percent of the amount of the subcontract involved, and this penalty shall be deposited in the fund out of which the prime contract is awarded. In any proceedings under this section the prime contractor shall be entitled to a public hearing and to five days' notice of the time and place thereof.

[§4111 \(CSLB Discipline\)](#). Violation of this chapter by a licensee under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code constitutes grounds for disciplinary action by the Contractors State License Board, in addition to the penalties prescribed in Section 4110..

[§4112 \(Contractor Defense\)](#). The failure on the part of a contractor to comply with any provision of this chapter does not constitute a defense to the contractor in any action brought against the contractor by a subcontractor.

[§4113 \(Definitions\)](#). As used in this chapter, the word "subcontractor" shall mean a contractor, within the meaning of the provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, who contracts directly with the prime contractor.

"Prime contractor" shall mean the contractor who contracts directly with the awarding authority.

[§7103.5 \(Clayton & Cartwright Acts\)](#). (a) As used in this section:

(1) "Public works contract" means a contract awarded through competitive bids by the state or any of its political subdivisions or public agencies, on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code, for the erection, construction, alteration, repair, or improvement of any structure, building, road, or other improvement of any kind.

(2) "Awarding body" means the state or the subdivision or agency awarding a public works contract.

(b) In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

(c) Subdivision (b) shall be included in full in the specifications for the public works contract or in the general provisions incorporated therein and shall be included in full in the public works contract or in the general provisions incorporated therein.

[§7104 \(Digging\)](#). Any public works contract of a local public entity which involves digging trenches or other excavations that extend deeper than four feet below the surface shall contain a clause which provides the following:

(a) That the contractor shall promptly, and before the following conditions are disturbed, notify the local public entity, in writing, of any:

(1) Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

(b) That the local public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the contract.

(c) That, in the event that a dispute arises between the local public entity and the contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, the contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

[§7107 \(Payment Retention\)](#). (a) This section is applicable with respect to all contracts entered into on or after January 1, 1993, relating to the construction of any public work of improvement.

(b) The retention proceeds withheld from any payment by the public entity from the original contractor, or by the original contractor from any subcontractor, shall be subject to this section.

(c) Within 60 days after the date of completion of the work of improvement, the retention withheld by the public entity shall be released. In the event of a dispute between the public entity and the original contractor, the public entity may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. For purposes of this subdivision, "completion" means any of the following:

(1) The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.

(2) The acceptance by the public agency, or its agent, of the work of improvement.

(3) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the contractor.

(4) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the public agency files for record a notice of cessation or a notice of completion.

(d) Subject to subdivision (e), within seven days from the time that all or any portion of the retention proceeds are received by the original contractor, the original contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract.

(e) The original contractor may withhold from a subcontractor its portion of the retention proceeds if a bona fide dispute exists between the subcontractor and the original contractor. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.

(f) In the event that retention payments are not made within the time periods required by this section, the public entity or original contractor withholding the unpaid amounts shall be subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs.

(g) If a state agency retains an amount greater than 125 percent of the estimated value of the work yet to be completed pursuant to Section 10261, the state agency shall distribute undisputed retention proceeds in accordance with subdivision (c). However, notwithstanding subdivision (c), if a state agency retains an amount

equal to or less than 125 percent of the estimated value of the work yet to be completed, the state agency shall have 90 days in which to release undisputed retentions.

(h) Any attempted waiver of the provisions of this section shall be void as against the public policy of this state.

**§7109 (Graffiti)**. (a) For purposes of this section:

(1) "Antigraffiti technology" means landscaping, paint, or other covering resistant to graffiti, or other procedures to deter graffiti.

(2) "Graffiti" means any unauthorized inscription, work, figure, or design that is marked, etched, scratched, drawn, or painted on any structural component of any building, structure, or other facility regardless of its content or nature and regardless of the nature of the material of the structural component.

(3) "Project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(b) If a public entity determines that a project may be vulnerable to graffiti and the public entity will be awarding a public works contract after January 1, 1996, for that project, it is the intent of the Legislature that the public entity may do one or more of the following:

(1) Include a provision in the public works contract that specifies requirements for antigraffiti technology in the plans and specifications for the project.

(2) Establish a method to finance a graffiti abatement program.

(3) Establish a program to deter graffiti.

**§7200 (Retention Maximum)**. (a) (1) This section shall apply with respect to all contracts entered into on or after January 1, 1999, between a public entity and an original contractor, between an original contractor and a subcontractor, and between all subcontractors thereunder, relating to the construction of any public work of improvement.

(b) In a contract between the original contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the public entity and the original contractor.

(c) When a performance and payment bond is required in the solicitation for bids, subdivision (b) shall not apply to either of the following:

(1) The original contractor, if the subcontractor fails or refuses to provide a performance and payment bond, issued by an admitted surety insurer, to the original contractor.

(2) The subcontractor, if a subcontractor thereunder fails or refuses to provide a performance and payment bond, issued by an admitted surety insurer, to the subcontractor.

(d) No party identified in subdivision (b) shall require any other party to waive any provision of this section.

(e) In the event that the contractor elects to substitute securities in lieu of retentions, the contractor may withhold from his or her subcontractors, who have not elected to substitute securities in lieu of retentions, the amount of retentions that would have otherwise been withheld.

**§7201 (Retention 5% Maximum)**. (a) (1) This section shall apply with respect to all contracts entered into on or after January 1, 2012, between a public entity and an original contractor, between an original contractor and a subcontractor, and between all subcontractors thereunder, relating to the construction of any public work of improvement.

(2) Under no circumstances shall any provision of this section be construed to limit the ability of any public entity to withhold 150 percent of the value of any disputed amount of work from the final payment, as provided for in subdivision (c) of Section 7107. In the event of a good faith dispute, nothing in this section shall be construed to require a public entity to pay for work that is not approved or accepted in accordance with the proper plans or specifications.

(b) (1) The retention proceeds withheld from any payment by a public entity from the original contractor, by the original contractor from any subcontractor, and by a subcontractor from any subcontractor thereunder shall not exceed 5 percent of the payment. In no event shall the total retention proceeds withheld exceed 5 percent of the contract price. In a contract between the original contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the public entity and the original contractor.

(2) This subdivision shall not apply if the contractor provides written notice to the subcontractor, pursuant to subdivision (c) of Section 4108, prior to, or at, the time that the bid is requested, that bonds shall be required, and the subcontractor subsequently is unable or refuses to furnish to the contractor a performance and payment bond issued by an admitted surety insurer.

(3) Notwithstanding any other provision of this subdivision, the retention proceeds withheld from any payment by an awarding entity set forth in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 10106, from the original contractor, by the original contractor from any subcontractor, and by a subcontractor from any subcontractor thereunder, may exceed 5 percent on specific projects where the director of the department has made a finding prior to the bid that the project is substantially complex and therefore requires a higher retention amount than 5 percent and the department includes in the bid documents details explaining the basis for the finding and the actual retention amount. In a contract between the original contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the department and the original contractor.

(4) Notwithstanding any other provision of this subdivision, the retention proceeds withheld from any payment by the awarding entity of a city, county, city and county, including charter cities and charter counties, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency, from the original contractor, by the original contractor from any subcontractor, and by a subcontractor from any subcontractor thereunder, may exceed 5 percent on specific projects where the governing body of the public entity or designee, including, but not limited to, a general manager or other director of an appropriate department, has approved a finding, on a project by project basis, during a properly noticed and normally scheduled public hearing and prior to bid that the project is substantially complex and therefore requires a higher retention amount than 5 percent and the awarding entity includes in the bid documents details explaining the basis for the finding and the actual retention amount. In a contract between the original contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the department and the original contractor.

(5) Any finding by a public entity that a project is substantially complex shall include a description of the specific project and why it is a unique project that is not regularly, customarily, or routinely performed by the agency or licensed contractors.

(c) A party identified in subdivision (a) shall not require any other party to waive any provision of this section.

(d) This section shall remain in effect only until January 1, 2023, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2023, deletes or extends that date.

## **California Labor Code Provisions**

[§1771 \(Prevailing Wages\)](#). Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

[§1771.1 \(Registered to Perform Work\)](#). (a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h) (1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j) (1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at one of the following:

(i) The address of the contractor or subcontractor on file with either the Secretary of State or the Contractors' State License Board.

(ii) If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.

[§1771.2 \(Action by the Courts\)](#). (a) A joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) may bring an action in any court of competent

jurisdiction against an employer that fails to pay the prevailing wage to its employees, as required by this article, or that fails to provide payroll records as required by Section 1776. This action shall be commenced not later than 18 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 18 months after acceptance of the public work, whichever occurs last.

(b) (1) In an action brought pursuant to this section, the court shall award restitution to an employee for unpaid wages, plus interest, under Section 3289 of the Civil Code from the date that the wages became due and payable, and liquidated damages equal to the amount of unpaid wages owed, and may impose civil penalties, only against an employer that failed to pay the prevailing wage to its employees, in accordance with Section 1775, injunctive relief, or any other appropriate form of equitable relief. The court shall follow the same standards and have the same discretion in setting the amount of penalties as are provided by subdivision (a) of Section 1775. The court shall award a prevailing joint labor-management committee its reasonable attorney's fees and costs incurred in maintaining the action, including expert witness fees.

(2) An action pursuant to this section shall not be based on the employer's misclassification of the craft of a worker in its certified payroll records.

(3) Liquidated damages shall be awarded only if the complaint alleges with specificity the wages due and unpaid to the individual workers, including how that amount was calculated, and the defendant fails to pay the wages, deposit that amount with the court to be held in escrow, or provide proof to the court of an adequate surety bond to cover the wages, within 60 days of service of the complaint. Liquidated damages shall be awarded only on the wages found to be due and unpaid. Additionally, if the defendant demonstrates to the satisfaction of the court that the defendant had substantial grounds for contesting that a portion of the allegedly unpaid wages were owed, the court may exercise its discretion to waive the payment of the liquidated damages with respect to that portion of the unpaid wages.

(4) This subdivision does not limit any other available remedies for a violation of this chapter.

**§1771.4 (Furnish Records)**. (a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) (A) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(i) At least monthly or more frequently if specified in the contract with the awarding body. For purposes of this clause, "monthly" means that a submission of records shall be made at least once every 30 days while work is being performed on the project and within 30 days after the final day of work performed on the project.

(ii) In an electronic format, in the manner prescribed by the Labor Commissioner, on the department's internet website.

(B) A contractor or subcontractor who fails to furnish records pursuant to subparagraph (A), relating to its employees, shall be subject to a penalty by the Labor Commissioner of one hundred dollars (\$100) per each day in which that party was in violation of subparagraph (A), not to exceed a total penalty of five thousand dollars (\$5,000) per project. Penalties received pursuant to this paragraph shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(C) The Labor Commissioner shall not levy a penalty pursuant to subparagraph (B) until a contractor or subcontractor fails to furnish the records pursuant to subparagraph (A) 14 days after the requirement set forth in clause (i) of subparagraph (A).

(D) Penalties pursuant to subparagraph (B) may only accrue to the actual contractor or subcontractor that failed to furnish the records pursuant to subparagraph (A).

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016.

[§1772 \(Employed Upon Public Work\)](#). Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work.

[§1773.1 \(Per Diem Wages\)](#). (a) Per diem wages, as the term is used in this chapter or in any other statute applicable to public works, includes employer payments for the following:

(1) Health and welfare.

(2) Pension.

(3) Vacation.

(4) Travel.

(5) Subsistence.

(6) Apprenticeship or other training programs authorized by Section 3093, to the extent that the cost of training is reasonably related to the amount of the contributions.

(7) Worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a), to the extent that the activities of the programs or committees are directed to the monitoring and enforcement of laws related to public works.

(8) Industry advancement and collective bargaining agreements administrative fees, provided that these payments are made pursuant to a collective bargaining agreement to which the employer is obligated.

(9) Other purposes similar to those specified in paragraphs (1) to (5), inclusive; or other purposes similar to those specified in paragraphs (6) to (8), inclusive, if the payments are made pursuant to a collective bargaining agreement to which the employer is obligated.

(b) Employer payments include all of the following:

(1) The rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program.

(2) The rate of actual costs to the employer reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the workers affected.

(3) Payments to the California Apprenticeship Council pursuant to Section 1777.5.

(c) Employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages. However, credit shall not be granted for benefits required to be provided by other state or federal law, for payments made to monitor and enforce laws related to public works if those payments are not made to a program or committee established under the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a), or for payments for industry advancement and collective bargaining agreement administrative fees if those payments are not made pursuant to a collective bargaining agreement to which the employer is obligated. Credits for employer payments also shall not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing. However, an increased employer payment contribution that results in a lower hourly straight time or overtime wage shall not be considered a violation of the applicable prevailing wage determination if all of the following conditions are met:

(1) The increased employer payment is made pursuant to criteria set forth in a collective bargaining agreement.



(2) The basic hourly rate and increased employer payment are no less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the director's general prevailing wage determination.

(3) The employer payment contribution is irrevocable unless made in error.

(d) An employer may take credit for an employer payment specified in subdivision (b), even if contributions are not made, or costs are not paid, during the same pay period for which credit is taken, if the employer regularly makes the contributions, or regularly pays the costs, for the plan, fund, or program on no less than a quarterly basis.

(e) The credit for employer payments shall be computed on an annualized basis when the employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer, unless one or more of the following occur:

(1) The employer has an enforceable obligation to make the higher rate of payments on future private construction performed by the employer.

(2) The higher rate of payments is required by a project labor agreement.

(3) The payments are made to the California Apprenticeship Council pursuant to Section 1777.5.

(4) The director determines that annualization would not serve the purposes of this chapter.

(f) (1) For the purpose of determining those per diem wages for contracts, the representative of any craft, classification, or type of worker needed to execute contracts shall file with the Department of Industrial Relations fully executed copies of the collective bargaining agreements for the particular craft, classification, or type of work involved. The collective bargaining agreements shall be filed after their execution and thereafter may be taken into consideration pursuant to Section 1773 whenever they are filed 30 days prior to the call for bids. If the collective bargaining agreement has not been formalized, a typescript of the final draft may be filed temporarily, accompanied by a statement under penalty of perjury as to its effective date.

(2) When a copy of the collective bargaining agreement has previously been filed, fully executed copies of all modifications and extensions of the agreement that affect per diem wages or holidays shall be filed.

(3) The failure to comply with filing requirements of this subdivision shall not be grounds for setting aside a prevailing wage determination if the information taken into consideration is correct.

[§1774 \(Prevailing Rate\)](#). The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

[§1775 \(Penalties\)](#). (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B) (i) The penalty may not be less than forty dollars (\$40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of this section and Sections 1771, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

[§1776 \(Payroll Records\)](#). (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and the Division of Labor Standards Enforcement of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records,

reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f) (1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(i) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(j) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

**[§1810 \(Legal Day's Work\)](#)**. Eight hours labor constitutes a legal day's work in all cases where the same is performed under the authority of any law of this State, or under the direction, or control, or by the authority of any officer of this State acting in his official capacity, or under the direction, or control or by the authority of any municipal corporation, or of any officer thereof. A stipulation to that effect shall be made a part of all contracts to which the State or any municipal corporation therein is a party.

[§1811 \(Hours Limitation\)](#). The time of service of any worker employed upon public work is limited and restricted to eight hours during any one calendar day, and 40 hours during any one calendar week, except as hereinafter provided for under Section 1815.

[§1812 \(Hours Records\)](#). Every contractor and subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the public work. The record shall be kept open at all reasonable hours to the inspection of the awarding body and to the Division of Labor Standards Enforcement.

[§1813 \(Contractor Penalty\)](#). The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

[§1814 \(Violations\)](#). Any officer, agent, or representative of the State or any political subdivision who violates any provision of this article and any contractor or subcontractor or agent or representative thereof doing public work who neglects to comply with any provision of Section 1812 is guilty of a misdemeanor.

[§1815 \(Overtime Pay\)](#). Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1<sup>1</sup>/<sub>2</sub> times the basic rate of pay.

**End of Public Works Provisions Text**

**Santa Barbara Metropolitan Transit District**  
**Traffic Control/Flagger**

**MASTER AGREEMENT with [contractor name]**

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 [contractor name], a [state name] [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 traffic control services at the driveway on Cota Street at MTD's Terminal 1 facility (the "Project");
- B. Contractor represents that it has the knowledge and experience to carry out the Project, and desires to carry out the Project pursuant to the terms and conditions hereof, and;
- C. Based upon the representations made by Contractor, MTD desires to retain the services of Contractor to carry out the aforesaid Project, upon the within terms and conditions.

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

- 1. Effect of Recitals. The foregoing recitals are hereby made express provisions of this Agreement.
- 2. FTA Provisions. Not applicable to this agreement.
- 3. Public Works Provisions. This Project is subject to the *State of California Provisions for Public Works Projects*, which is attached hereto as Exhibit "A" and incorporated herein by this reference.
- 4. Scope of Services. MTD has heretofore issued on March 16, 2022 the Scope of Services contained in Invitation for Bids (IFB), a true copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference.
- 5. Bid. Contractor has heretofore submitted on [insert date] a bid to carry out the Project, true copies of relevant parts that are attached hereto as Exhibit "C" and incorporated herein by this reference.
- 6. Order of Control. Contractor shall carry out the Project described in Exhibit "B" to this Agreement for the price quoted in Exhibit "C". All work and services shall be performed according to and controlled by the terms and provisions of this Agreement and the exhibits attached hereto. In the event of any conflict between the contract documents, the following order of control shall prevail: MTD Master Agreement, Exhibit "A", Exhibit "B", Exhibit "C".
- 7. Contract Price. Contractor shall carry out the Project for the firm, fixed prices per item of which is in accordance with and itemized in Exhibit "C".
- 8. Payment. Contractor shall submit invoices to MTD semi-monthly for completed work of the Project. Payment from MTD shall be made to Contractor no later than thirty (30) days after acceptance by MTD (see paragraph 15) and receipt of a valid invoice, which shall be sent to Santa Barbara MTD, via email to [AP@sbmtd.gov](mailto:AP@sbmtd.gov) with a copy to [rgripp@sbmtd.gov](mailto:rgripp@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 bid price and shall be included on the Contractor's invoice.
- 10. Project Schedule. As described in Exhibit "B".
- 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 bid price and shall not be paid otherwise by MTD.

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

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

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

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

16. Warranty. The Contractor shall warrant to MTD that, for five (5) years after MTD's full acceptance of items, services, work or systems, each shall conform with the requirements hereof and be free of defects. In addition to other remedies which may be available, MTD may at its option return any non-conforming or defective items to the Contractor and/or require correction or replacement of said item when the defect is discovered, all at the Contractor's risk and expense. If MTD does not require such correction or replacement of non-conforming or defective items, the Contractor shall repay such portion of the payment specified herein or such additional amount as is equitable under the circumstances. The rights of MTD hereunder are in addition to, and not limited by, the Contractor's standard warranties. Acceptance of items, services, work or systems by MTD, or payment therefor, shall not relieve the Contractor of its obligations thereunder.

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

18. Insurance.

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

21. Liquidated Damages. Not applicable to this agreement.

22. Infringement of Patents. Not applicable to this agreement.

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

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

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

MTD:

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

CONTRACTOR:

[authorized official name & title]  
 [contractor name]  
 [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. 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

[contractor name]

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date