

***Invitation for Bids for Hybrid Bus Battery Refresh Kit***  
**SOLICITATION INSTRUCTIONS**  
**Project Summary Sheet**

**Project Name:** Hybrid Bus Battery Refresh Kit

**Solicitation Issuance Date:** Friday, December 22, 2023

**Project Description:** Delivery of Hybrid Bus Battery Refresh Kit, specific for Gillig 40' Hybrid bus with Allison authorized genuine OEM replacement components or equal (Allison ESS2 refresh package part #29551338, including sub packs, fan relay, new assembly bolts, data tag); three (3) Allison part #29542847 Service Kits – Main Relay, High Side Allison Transmission or equal; and three (3) Allison part #29542848 Service Kits – Main Relay, Low Side Allison Transmission or equal.

**Project/Delivery Location:** Deliveries shall be made directly to the mechanic shop by entering driveway at 550 E. Cota, Santa Barbara, CA 93101

**Clarification/Change Request Due Date/Time:** Thursday, January 4, 2024, at 10:00 AM PST

**Bid Due Date/Time:** Thursday, January 11, 2024, at 10:00 AM PST

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

**Bid Contents:** Submittals must include product information (technical description or brochure) and the following forms fully completed and signed:

|  |   |
|--|---|
| <input type="checkbox"/> Price Bid Form          | <input type="checkbox"/> Acknowledgement of Addenda                               |
| <input type="checkbox"/> Bidder Information Form | <input type="checkbox"/> Non-Collusion Declaration and Compensation Certification |

**Anticipated Contract Award/Order Date:** Thursday, January 18, 2024

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

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

**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  
Hybrid Bus Battery Refresh Kit

December 22, 2024

**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](mailto:vwhite@sbmtd.gov) | [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov)

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
***Invitation for Bids for Hybrid Bus Battery Refresh Kit***  
**SOLICITATION INSTRUCTIONS**  
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**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
***Invitation for Bids for Hybrid Bus Battery Refresh Kit***  
**SOLICITATION INSTRUCTIONS**

**1. PROJECT DESCRIPTION**

The Santa Barbara Metropolitan Transit District (MTD), a California special district public transit operator, seeks a fixed price for Hybrid Bus Battery Refresh Kit, specific for Gillig 40' Hybrid bus with Allison authorized genuine OEM replacement components or equal.

Price shall include delivery of equipment, warranties, and installation support as outlined in the attached *Statement of Work*. The contract award shall be accomplished by issuing an MTD Purchase Order to the lowest responsive and responsible Bidder whose bid meets the requirements and criteria. *MTD Purchase Order Terms and Conditions* are also included.

**2. PRE-BID SUBMITTAL ACTIVITIES**

**2.1 IFB CONTENTS & CONTRACT DOCUMENTS**

The IFB packet is available on MTD's website <https://sbmtd.gov/about/doing-business/>. 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**

Communications concerning this solicitation may only be through MTD's purchasing agent and solicitation contact, Valerie White via email to [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov). Unless authorized by Ms. White, Bidders and their representatives shall not make contact or communicate with any other MTD agent or employee in regard to this solicitation.

Bidders may request clarification, a change, or an approved equal to any aspect or requirement of the IFB, or any addenda thereto. Requests may include suggested substitutes for specified items and for any brand names which, whenever used in this solicitation, shall mean the brand name or approved equal. For serious consideration, any request for a change or approved equal must be supported with technical data, test results or other pertinent information evidencing that the change will result in a condition equal to or better than that required by the IFB without a significant increase in project cost or time. If MTD elects to accept the request, all Bidders will be notified through a written addendum.

**All requests for an approved equal must be emailed to [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov) by Thursday, January 4, 2024, 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 on questions, requests, or comments received, MTD may modify the IFB if it is in its best interests. 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 email to all parties known to have received the IFB. Failure of a Bidder to receive any addendum shall not relieve it from any obligation under its bid or under the IFB as clarified or modified.**

### **3. BID PREPARATION & SUBMITTAL**

#### **3.1 MTD FORMS**

The Bidder's submittal shall include the attached forms, fully and accurately completed. **The forms must be signed by a company official authorized to bind the Bidder contractually.** Failure to provide all required information in the bid may result in the rejection or disqualification of the bid.

**Price Bid**—Bid shall include the fully completed and signed Price Bid form attached in this IFB stating the total cost for carrying out the project under the contracted terms, including the requirements set forth in the *MTD Purchase Order Terms and Conditions* and the *Statement of Work*. The price bid must include all necessary equipment and accessories for full installation, functionality and immediate use, a warranty, instruction manuals, training resources, and available support during installation if necessary. **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 are issued as part of the addenda, the most recent version must be used, or the bid may be considered non-responsive and 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 non-responsive, resulting in rejection.**

**Bidder Information**—Bid shall include the fully completed *Bidder Information* form included in this IFB. This includes providing a reference of a public agency that equipment, similar to that of MTD's needs, has been successfully supplied to. If proposing a refresh kit equivalent to the Allison refresh kit, detailed specifications of the kits must be attached.

**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.

#### **3.2 BID SUBMITTAL & OPENING**

**One (1) 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 "Hybrid Bus Battery Refresh Kit".**

Sealed bids shall be addressed and delivered to:

Santa Barbara Metropolitan Transit District  
**Hybrid Bus Battery Refresh Kit IFB**  
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. MTD administrative offices are 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 - 4:00 PM (local time), by first calling 805-963-3364 ext. 200.
- Original bid submittals may not be emailed or faxed.

**Bids will only be accepted until Thursday, January 11, 2024, at 10:00 AM (local time).** Unless due to the fault of MTD, bids received after such time will not be considered.

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 before the bid opening.

### **3.3 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 email request from the Bidder's authorized representative to [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov). Modifications shall be submitted in writing in the same form and manner as the original bid. 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.

### **3.4 BID STIPULATIONS**

The following stipulations and limitations apply to this solicitation:

- All bids submitted as a result of this solicitation become the property of MTD
- Bids submitted in response to this IFB will remain valid for 90 calendar days following the bid due date
- MTD will not pay any cost incurred by a Bidder resulting from preparation of its bid
- MTD reserves the sole right to review, accept, or reject bids received as a result of this solicitation
- MTD reserves the right to cancel this solicitation in whole or in part if in its best interests to do so

## **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 for the purpose of ascertaining its completeness and responsiveness to the provisions of this solicitation. Such process may involve requesting additional or clarifying information from the Bidder. Bids that do not contain all required materials, information or forms; or where such materials, information or forms are substantially incomplete, may be determined as non-responsive and rejected by MTD. In such cases, MTD shall notify the Bidder in writing of its rejection and the basis thereof. This process shall continue until such time as the low responsive Bidder is determined.

### 4.3 RESPONSIBILITY

MTD shall assess the low responsive Bidder's "responsibility." For purposes of this solicitation, responsibility is defined as evidence of adequate financial and technical capacity to undertake the project; and satisfactory performance in previous contracts. 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 case, MTD shall notify the Bidder in writing of its rejection and the basis thereof. This process shall continue until such time as the low responsive and responsible Bidder is determined.

### 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 Thursday, January 18, 2024. If approved, MTD shall issue a purchase order which includes the *Statement of Work*, and relevant portions of the bid and post-award submittals. Receipt of an *MTD Purchase Order* will represent Notice to Proceed.

### 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 1-3)**

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
***Invitation for Bids for Hybrid Bus Battery Refresh Kit***  
**PRICE BID**

|   |    |
|---|----|
| Price Bid Total for Hybrid Bus Battery Refresh Kit, delivered per the specifications and requirements in the <i>Statement of Work</i> . | \$ |
|---|----|

The Bidder hereby represents and acknowledges that:

1. It is the intent of the Santa Barbara Metropolitan Transit District (MTD) to award a Contract to the responsive and responsible Bidder submitting the lowest Price Bid Total.
2. Price Bids submitted must NOT include any sales tax (state, local, otherwise). Sales tax for Santa Barbara to be added at the time of invoice.
3. It has sufficiently informed itself in all matters affecting the supply and delivery of the items and performance of the work: furnishing all labor, supplies, material, equipment, and accessories needed to make the product fully functional and available for immediate use.
4. It 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 Contract Documents include the *Solicitation Instructions, Statement of Work, MTD Purchase Order Terms and Conditions*, 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.
5. 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.
6. 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.
7. Its bid, including this Price Bid, is valid for 60 calendar days following the bid due date.

\_\_\_\_\_  
 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 Hybrid Bus Battery Refresh Kit***  
**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 | _____ |

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 Hybrid Bus Battery Refresh Kit***  
**BIDDER INFORMATION**

**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: \_\_\_\_\_ CAGE Code or DUNS# \_\_\_\_\_

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

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

---

**Authorizing Contact**

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

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

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

---

**General character of work performed by the company and years of experience:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**Work Reference**

List a transit agency where battery refresh kits were provided for a similar commercial bus fleet as MTD. A California transit agency reference should be provided whenever possible. The contact should be of a project manager, materials manager or bus maintenance supervisor.

Client Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_

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

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**Please attach a description or product brochure of equipment.** *The attachment must include equipment specifications; installation explanation and/or drawings; and warranty provisions. State any deviations from the specifications listed in the Statement of Work. If you are proposing a refresh kit equivalent to the Allison refresh kit, attach a detailed explanation and the specifications of the kit with your bid.*

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
***Invitation for Bids for Hybrid Bus Battery Refresh Kit***  
***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 Hybrid Bus Battery Refresh Kit**  
**STATEMENT OF WORK**

The technical specifications herein provide the minimum requirements of the Santa Barbara Metropolitan Transit District (MTD) for Hybrid Bus Battery Refresh Kit, specific for Gillig 40' Hybrid bus with Allison Transmission. The procurement is to replace the current Energy Storage System (ESS) from MTD's fleet Bus 909 (VIN#15GGD3013B1179198) tagged as:



Hybrid Bus Battery Refresh Kit includes the following Allison authorized OEM components or equal:

- One (1) Allison ESS2 refresh of ESS1 package and including package assembly sub packs 1-6 with new Nickel Metal Hydride (NiMH) battery modules, fan relay assembly, new bolts assembly, data tag, 4.
- Three (3) Allison Service Kits – Main Relay, High Side Allison Transmission
- Three (3) Allison Service Kits – Main Relay, Low Side Allison Transmission

The price bid must also include all necessary equipment and accessories for full installation, functionality and immediate use. Service instructions for procedures on installing the battery refresh kit are required, with technical resources and available support during installation if it becomes necessary.

**Part List**

(Allison part #s for reference)

| <b>Part Number</b> | <b>Description</b>                | <b>Quantity</b> |
|--------------------|-----------------------------------|-----------------|
| <b>29542847</b>    | Service kit, main relay high side | 3               |
| <b>29542848</b>    | Service kit, main relay low side  | 3               |
| <b>29551338</b>    | Refresh kit                       | 1               |

**Deviations**

Any deviations from the specifications listed within this Statement of Work must be **pre-approved** by MTD via an addendum.

Email [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov) with any proposed refresh kit equivalent to the Allison refresh kit, by including a detailed specifications by Thursday, January 4, 2024, at 10:00 AM PST. If MTD elects to accept the request, a written addendum will be issued.

**Vendor**

Vendor must be an authorized Allison Transmission distributor or equal, having experience in the provision of Hybrid Bus Battery Refresh Kits, with evidence of satisfactory delivery and performance on similar commercial transit bus fleets by submitting work reference.

### **Delivery**

Once an MTD purchase order is issued, delivery of all equipment to MTD must be within sixty (60) days.

Delivery to MTD's maintenance facility in Santa Barbara, CA will be included in the price.

All items provided shall be delivered FOB Santa Barbara to 550 Olive Street, Santa Barbara, CA 93101. To access the MTD delivery point at the mechanic shop on site, enter through the back driveway at 550 East Cota Street, Santa Barbara, CA 93101. Delivery shall be during regular business hours, 8:00 AM to 4:00 PM, Monday through Friday, excluding holidays. Vendor shall contact MTD's Fleet & Facilities Manager prior to making a delivery in order to make final arrangements. The Fleet & Facilities Manager's contact information shall be provided by MTD at the time of Purchase Order issuance.

MTD is subject to applicable California Sales Tax for Santa Barbara County, which shall **not be included** in the Vendor's bid price but will be on the Vendor's invoice (8.75%).

Delivery shall not constitute acceptance. MTD reserves the right to inspect any and all items and services upon delivery to comply with the specifications outlined in this bid package. MTD shall inspect such deliverables no later than forty-five (45) calendar days after said deliverables have been received, and, if applicable installed or otherwise set up for usage by MTD. Any item or service not meeting MTD's approval shall be replaced or completed at no additional cost to MTD. If found in conformance with IFB, MTD shall approve the Vendor's invoice for payment, thereby constituting acceptance.

### **Warranty**

The ESS kit must include an Allison 2-Year warranty, or equal providing 100% coverage.

All equipment purchased must come with this warranty provision and shall be further subject to warranty requirements of MTD as set forth in the purchase order terms and conditions. In addition to other remedies which may be available, MTD may, at its option, return any non-conforming or defective items to the Vendor and/or require correction or replacement of said item when a defect is discovered, all at the Vendor's risk and expense.

**End of Statement of Work**

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
***Invitation for Bids for Hybrid Bus Battery Refresh Kit***  
**MTD PURCHASE ORDER TERMS AND CONDITIONS**

1. Qualifications. Contractor or Contractor's representative (hereinafter, collectively, "Contractor") certifies that Contractor (1) is qualified to do business and is in good standing in the State of California, (2) has never been restricted or debarred from federal contracting, and (3) has authority to enter into and perform its obligations under this Purchase Order, which constitutes a valid and binding obligation of Contractor.
2. Prohibited Interest. The parties hereto covenant and agree that no Board member, officer, or employee of MTD, during his/her tenure as such and for one year thereafter, has any interest, whether contractual, financial or otherwise, in this Purchase Order 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 party, 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.
3. Compliance with Laws and Regulations. Contractor warrants that in the performance of work and/or services under this Purchase Order it will comply with all applicable federal, state and local laws and ordinances, and all lawful orders, rules, and regulations thereunder.
4. Delivery & Freight. Any item provided under this purchase order shall be delivered FOB Santa Barbara to 550 Olive Street, Santa Barbara, CA 93101. All freight and delivery charges shall already have been included in the Contractor's purchase order price and shall not be paid otherwise by MTD.
5. 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 it is safely delivered and/or installed or otherwise set up for usage by MTD. Upon such safe delivery and applicable installation/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, however, constitute acceptance of any item by MTD. The Contractor shall further warrant that the title to any item provided hereunder is free from all claims, encumbrances and liens.
6. Acceptance. All items, devices, services, work or systems to be furnished by the Contractor pursuant to this purchase order shall be subject to acceptance by MTD. MTD shall inspect such deliverables no later than fourteen (14) calendar days after said deliverables have been received, and, if applicable installed or otherwise set up for usage by MTD. Acceptance shall occur when it is determined by MTD that all items, devices, services, work or systems provided pursuant to this purchase order are in full compliance with this purchase order and any other applicable contract documents. Upon acceptance, formal notification thereof shall be made by MTD via notice to the Contractor.
7. Damage or Loss. All losses or damage arising from circumstances, either natural or artificial, foreseeable or unforeseeable, which may be encountered by the Contractor during performance under this Purchase Order, shall be borne solely by the Contractor. This provision shall also apply to losses or damage resulting from any act or omission on the part of the Contractor or any agent or person employed by or working for or with the Contractor.
8. Infringement of Patents. The Contractor agrees that it will, at its own expense, defend all suits and proceedings instituted against MTD and pay any award of damages assessed against MTD in such suits or proceedings, insofar as the same are based upon any claim that Contractor's items, devices, services, work, systems, or any part thereof, or any tool or process used in or for performance of this purchase order, constitutes an infringement of any legal United States copyright or patent. MTD agrees that it will give the Contractor prompt notice in writing of the institution of any such suit or proceeding and will permit the Contractor through any counsel reasonably agreed to by MTD to defend the same and will give Contractor information, reasonable assistance and authority necessary for the Contractor to do so. Contractor may settle any such litigation at its sole cost. If anything provided to MTD under this purchase order is held to constitute infringement and use of same is enjoined, the Contractor shall, at its own expense and at its option, either procure for MTD the right to continue using the infringing item, or replace same with a non-infringing similar item, or modify the item so it becomes non-infringing.
9. Warranty. Contractor warrants to MTD that, after MTD's full acceptance of items, services, or work under this Purchase Order, each shall conform with the requirements hereof and be free of defects. The rights of MTD hereunder are in addition to, and not limited by, the Contractor's standard warranties, if any. Acceptance of items, services, or work hereunder by MTD, or payment therefor, shall not relieve the Contractor of its obligations under this Purchase Order or any other warranty, whether express or implied.
10. Breach. In the event of a breach of any of these terms and conditions by Contractor, MTD shall have all remedies provided at law or in equity, which remedies shall be cumulative, and the election of one remedy shall not preclude MTD's pursuit of another. If a Contractor breach is determined by MTD to have been willful, the procurement officer shall be entitled to preclude the Contractor from further contracts with MTD. MTD shall at all times retain the right to terminate the contract upon any breach or failure to perform thereof by the Contractor, if such breach or failure remains uncured for ten (10) days following written notice thereof to the Contractor.
11. FTA funds. If this contract involves Federal Transit Administration ("FTA") funds in excess of Ten Thousand Dollars (\$10,000), the Contractor hereby acknowledges that MTD, the FTA, the U.S. Comptroller General and duly authorized representatives of each shall have access to the Contractor's records directly pertaining to this purchase order. Such records shall be maintained for three (3) years after all pending purchase order and contract matters with MTD have been closed.
12. Indemnification. The Contractor hereby covenants and agrees to defend, indemnify and hold MTD harmless from any and all claims, actions, damages, costs or liabilities, including attorney's fees, expert fees and court costs, arising from the negligence or wrongful act or omission of Contractor. Included, without limitation, in the scope of the foregoing indemnification obligation is Contractor's obligation to maintain full insurance coverage for commercial general liability and worker's compensation, with MTD added as an additional named insured under both policies.
13. 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, with the consent of the non-assigning party, the obligations and burdens of a party under this purchase order shall bind and apply to any permitted successor-in-interest or assignee of the business and/or operations of an assigning party.
14. Dispute Resolution. Any dispute hereunder is subject to alternative dispute resolution ("ADR"). The general manager or procurement officer of the MTD is hereby authorized to settle or resolve any dispute, provided agreement can be obtained from Contractor. Failing such agreement, within a reasonable time after the dispute arises, the parties must first pursue mediation, and *binding* arbitration thereafter consistent with the ADR policy.
15. Termination. Notwithstanding any other provision hereof to the contrary, MTD reserves the right to terminate this contract for any reason, at any time, upon thirty (30) days advance notice to the Contractor. Upon such notice of termination (other than for a breach hereof by Contractor), MTD shall accept all goods and/or services tendered to the date of such notice and shall also pay the Contractor all costs reasonably incurred by the Contractor in the supplying of goods or in the rendering of services prior to the notice of termination.
16. Attorney Fees and Costs. In the event of a controversy (including, but not limited to, mediation or arbitration) between the parties with respect to the interpretation, enforcement or termination of this purchase order, the prevailing party in such controversy shall be entitled to receive, in addition to such other award as the arbitrator may deem appropriate, full reimbursement for its costs and reasonable attorney's fees incurred therein.
17. Master Agreement. Contractor understands and agrees that any Master Agreement between MTD and Contractor related to this transaction will control and supersede these terms and conditions, if any are in conflict with the terms and conditions of an applicable Master Agreement.

December 22, 2023