

## Request for Qualifications for Renewable Diesel Supply

### *SOLICITATION INSTRUCTIONS*

#### Project Summary Sheet

**Project Name:** Renewable Diesel Supply

**Project Description:** The Santa Barbara Metropolitan Transit District (MTD) is a special district transit operator created under Sections 95000, et seq. of the California Public Utilities Code, serving the southern portion of Santa Barbara County, California, with fixed-route bus service.

By issuing this *Request for Qualifications for Renewable Diesel Supply* (RFQ), MTD is requesting qualifications from interested renewable diesel fuel suppliers to determine eligibility to participate in a future invitation for fixed-price fuel bids for a contract up to 12 months.

**Project Location:** MTD Terminal, 550 Olive Street, Santa Barbara, CA 93101

**Solicitation Issuance Date:** Wednesday, February 21, 2024

**Requests & Clarifications Deadline:** Wednesday, March 6, 2024, at 10:00 AM (PST)

**Qualifications Submittal Due Date/Time:** Thursday, March 14, 2024, at 10:00 AM (PDT)

**Qualifications Submittal Location:** Delivery to MTD via email to [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov)

**Submittal Contents:** Statement of Qualifications; Certificate of Insurance; *Vendor Information* form; *Acknowledgment of Addenda* form; *Contract Terms Certification* form; *References*; *Suppliers & Subcontractors* form; *Non-Collusion Declaration and Compensation Certification*; and *Lobbying Certification*

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

**Check MTD's website at <https://sbmtd.gov/about/doing-business/> for RFQ updates.**



Request for Qualifications  
for  
Renewable Diesel Supply

February 21, 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

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**  
**Request for Qualifications for Renewable Diesel Supply**  
**SOLICITATION INSTRUCTIONS**

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# **SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**

## **Request for Qualifications for Renewable Diesel Supply**

### **SOLICITATION INSTRUCTIONS**

#### **1 BACKGROUND**

The Santa Barbara Metropolitan Transit District (MTD), a public transit operator, is issuing this *Request for Qualifications for Renewable Diesel Supply (RFQ)* as an initial step in its procurement process which will include a separate *Invitation for Bids for Renewable Diesel Supply (IFB)* to be released on a later date. The future IFB will specify MTD's renewable diesel delivery requirements for approximately 500,000 gallons of renewable diesel annually to an MTD on-site facility. A copy of MTD's *Renewable Diesel Supply Statement of Work* for the upcoming IFB is attached, included for reference.

With this RFQ, MTD will pre-qualify interested parties by determining their financial and technical capacity to meet MTD's renewable diesel and contract requirements. **Only those vendors pre-qualified through this RFQ process will receive an invitation to bid for providing renewable diesel.** The pre-qualification process consists of submitting the forms and information by email to [purchasing@smtd.gov](mailto:purchasing@smtd.gov) as described below.

**THE PRE-QUALIFICATION SUBMITTAL MUST BE RECEIVED BY MTD NO LATER THAN THURSDAY, MARCH 14, 2024, BY 10:00 AM (LOCAL TIME). FAILURE OF MTD TO RECEIVE THE PRE-QUALIFICATION INFORMATION BY THE DEADLINE WILL AUTOMATICALLY DISQUALIFY THE VENDOR FROM SUBMITTING A BID FOR THE FUTURE.** It is strongly recommended that interested vendors submit their pre-qualification package in advance of the deadline and contact Valerie White, MTD Purchasing Agent, at (805) 963-3364 x244 during regular business hours to verify MTD's receipt of the email.

#### **2 PRE-SUBMITTAL ACTIVITIES**

##### **2.1 RFQ Packet Contents**

This RFQ is composed of the following items which make up the qualification packet and is available on MTD's website at <https://sbmtd.gov/about/doing-business/>.

- ❑ *Solicitation Instructions* which is the document presently being read, providing the submittal process
- ❑ Attachment 1-Forms & Certifications to be completed as part of the bid submittal
- ❑ Attachment 2-*Statement of Work* provides a description of work contained in the future IFB
- ❑ Attachment 3-*MTD Master Agreement* will serve as the future contract between MTD and an awarded bidder as part of a separate IFB process to take place at a future date
- ❑ Attachment 4-*Federal Transit Administration (FTA) Contract Provisions* covers the FTA's conditions of the contract, as required for this federally-funded project

Interested parties should be certain to read all documents in this RFQ in order to prepare qualification submittals correctly and be fully aware of the future contractual terms and conditions. Failure of an interested vendor to follow instructions may result in rejection or disqualification of its submittal. The terms "party", "vendor", and "supplier" herein are used interchangeably and have the same meaning.

## 2.2 Communications, Requests & Clarifications

There will be no pre-submittal meetings or conferences to review the RFQ process. All questions and communications concerning this solicitation may only be through the purchasing agent, Valerie White, via email to [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov). Unless authorized by the purchasing agent, interested vendors and their representatives shall not contact or communicate with any other MTD agent or employee regarding this solicitation.

Interested parties may request clarification or request a change to any aspect or requirement of the RFQ or any addenda thereto. Change requests must be provided with sufficient information supporting the request to allow MTD to make a fair and reasonable determination. If MTD elects to accept the request, all interested vendors will be notified through a written addendum. **Requests must be emailed to [purchasing@sbmtd.gov](mailto:purchasing@sbmtd.gov) by Wednesday, March 6, 2024, at 10:00 AM (local time) to be considered.**

## 2.3 RFQ Modifications & Addenda

MTD reserves the right to amend this RFQ through written addenda. No other form of communication with any officer, employee, or agent of MTD shall be binding upon MTD of the RFQ.

Addenda will be posted to MTD's website <https://sbmtd.gov/about/doing-business/>. As a courtesy, MTD will concurrently send addenda via email to all parties known to have received the RFQ; however, MTD retains no responsibility for any consequences resulting from the failure of a vendor to receive addenda from MTD via email. It is the responsibility of each interested vendor to check MTD's website for all relevant solicitation documents.

## 3 PREPARATION & SUBMITTAL

### 3.1 MTD Forms & Certifications

- Vendor Information—Provide the fully completed *Vendor Information* form included in this RFQ.
- Acknowledgment of Addenda—Interested vendor shall acknowledge either the receipt of each addendum or that there were no addenda by including in its submittal the fully completed and signed *Acknowledgement of Addenda* form included in this RFQ.
- Contract Terms Certification—Provide the signed and dated *Contract Terms Certifications* form included in this solicitation indicating that the interested vendor understands and agrees to the project requirements, including all of the terms and conditions of a possible future contract to be formally solicited separately from this RFQ and awarded by MTD on a later date.
- References, Suppliers & Subcontractors Form—Provide the fully completed *References, Suppliers & Subcontractors* form included in this solicitation. Work references should consist of customers similar in nature and fuel quantity requirements to MTD to the extent feasible. **If not the interested vendor itself, the 'Suppliers' section must include the renewable diesel producer(s), and the "Subcontractor" section must include the fuel delivery trucking firm(s).** If these vary during the contract, list the anticipated three most frequently used suppliers and subcontractors. If additional space is needed, make copies of the blank form. It is imperative that current, accurate contact names, emails, and phone numbers are provided. It is strongly recommended that the interested vendor give advance notice to such contacts that MTD will be contacting them as references and that a response from them may determine your eligibility to bid.
- Non-Collusion Declaration and Compensation Certification—Interested vendors shall include the fully completed *Non-Collusion Declaration and Compensation Certification* form included in this RFQ.

- Lobbying Certification**—Provide the fully completed and signed *Lobbying Certification* form, which is required because this is a federally funded project with a contract amount exceeding \$100,000.

### 3.2 Vendor-Prepared Documents

- Statement of Qualifications**—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. Please limit such information to 10 pages and 5 MB in size.
- Certificate of Insurance**—Provide a Certificate of Liability Insurance listing relevant policy coverages currently in effect. Evidence of insurance ideally meets the minimum coverage stipulated in paragraph 18 of the *MTD Master Agreement* (see Attachment 2). If MTD requires greater or different coverage than currently held by the interested vendor, it must be capable of providing a Certificate of Insurance meeting MTD's insurance requirements prior to the start of an awarded contract. **However, if the insurance certificates supplied as part of this pre-qualification process are substantially less than MTD's required coverage, this will weigh negatively in the determination of the interested vendor's financial capacity to undertake the project and, thus, to be invited at a later date to submit a bid.** While not being requested at this time, proof of similar insurance coverage will be required for any independent trucking firms being used for fuel delivery to MTD.

### 3.3 Qualifications Submittal

**Interested vendors shall submit one (1) complete electronic set of their qualifications submittal via email to purchasing@sbmtd.gov, stating "Renewable Diesel Supply RFQ" as the email subject.**

**Qualification submittals shall be accepted until 10:00 AM (local time) on Thursday, March 14, 2024.**

Unless due to the fault of MTD, submittals received after such time cannot be considered by MTD.

Submittals submitted as a result of this solicitation become the property of MTD. MTD will not pay any cost incurred by a bidder resulting from preparation or delivery of its submittal.

## 4 DETERMINATION OF QUALIFICATIONS

### 4.1 Submittal Review

MTD shall examine all eligible qualification submittals received to determine the responsiveness to the provisions of this solicitation. Qualification submittals that do not contain all required items or where such documents are substantially incomplete may be considered non-responsive and rejected by MTD. MTD will also assess responsibility, which in this solicitation is defined as satisfactory performance in previous contracts and having the financial capacity to undertake the project. MTD will use the reference information provided in the submittal and other information, as needed, for this determination. The qualification review is anticipated to be completed and interested parties to be notified of their qualification status by March 31, 2024. Once qualified by MTD, a firm may participate in any MTD Renewable Diesel Supply IFB issued through March 31, 2025.

### 4.2 Protest Procedures

Procurement protest procedures have been established to ensure uniform, timely, and equitable consideration of all complaints received by MTD concerning its procurement activities. Such procedures may be found on MTD's website at the following link: <https://sbmtd.gov/about/doing-business/>.

***SANTA BARBARA METROPOLITAN TRANSIT DISTRICT***  
**Request for Qualifications for Renewable Diesel Supply**

***Attachment 1***  
***PRE-QUALIFICATION***  
***FORMS AND CERTIFICATIONS***

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**

**Request for Qualifications for Renewable Diesel Supply**

***VENDOR INFORMATION***

**General Information**

Business Name: \_\_\_\_\_

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

Business Federal Tax ID Number: \_\_\_\_\_ (will be SSN if sole proprietorship)

DUNS Number (if interested vendor has one): \_\_\_\_\_

**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)

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

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

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_ 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**

**Request for Qualifications for Renewable Diesel Supply**

**ACKNOWLEDGEMENT OF ADDENDA**

The undersigned acknowledges either that there were no addenda to the solicitation or that the Interested Vendor received the following addenda to this *Request for Qualifications for Renewable Diesel Supply* and has incorporated information or changes in said addenda within its bid.

No Addenda

**OR**

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

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

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

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

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

\_\_\_\_\_  
Business Name of Vendor

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

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**

**Request for Qualifications for Renewable Diesel Supply**

**CONTRACT TERMS CERTIFICATION**

Vendor 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*, *MTD Master Agreement*, *Federal Transit Administration Contract Provisions*, *Statement of Work*, 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 Vendor

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

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**

**Request for Qualifications for Renewable Diesel Supply**

**REFERENCES, SUPPLIERS & SUBCONTRACTORS**

Business Name of Vendor: \_\_\_\_\_

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***Credit References***

Include your primary bank and two firms that you **currently** purchase materials or services from on credit:

Bank Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Vendor Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Vendor Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

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***Work References***

Include three current or recent customers for which you provided **similar services** to the project work:

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

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***Suppliers & Subcontractors***

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

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

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

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

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

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

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

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

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**

**Request for Qualifications for Renewable Diesel Supply**

***NON-COLLUSION 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**

**Request for Qualifications for Renewable Diesel Supply**

**LOBBYING CERTIFICATION**

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

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Business Name of Vendor

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

***SANTA BARBARA METROPOLITAN TRANSIT DISTRICT***  
**Request for Qualifications for Renewable Diesel Supply**

***Attachment 1***

***RENEWABLE DIESEL SUPPLY***  
***STATEMENT OF WORK***

# SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

## *Renewable Diesel Supply*

### STATEMENT OF WORK

#### 1. PROJECT SUMMARY & GENERAL REQUIREMENTS

##### 1.1 PROJECT SUMMARY

The Santa Barbara Metropolitan Transit District (MTD) desires to purchase Renewable Diesel Fuel and have it delivered to its on-site underground storage tank for usage by its fleet of fixed-route public transit buses powered by diesel engines (the “project”). To meet this desire, Contractor shall supply, sell and deliver to MTD Renewable Diesel Fuel on an "as needed" basis with **an expected annual volume of 500,000 U.S. gallons**. Contractor shall provide the fuel in the industry **standard load size of approximately 7,500 gallons** within 48 business weekday hours of order by MTD. All fuel delivered to MTD by Contractor shall meet or exceed applicable government agency and ASTM standards in effect at the time of delivery.

##### 1.2 LIMITATIONS OF STATEMENT OF WORK

This Statement of Work does not necessarily include a full and complete description of all required parts, materials, resources, services, or processes required to fulfill the project. Information provided in this Statement of Work is provided only for those materials, procedures, and values that are considered key to achieving the overall goals and objectives of the project. Contractor is expected to be experienced in and adhere to the customs of the trade. Any substantive deviations from such customs shall have been explicitly identified to MTD in Contractor’s bid and either accepted or rejected prior to the award of the Agreement for the project.

#### 2. TECHNICAL SPECIFICATIONS

##### 2.1 RENEWABLE DIESEL FUEL DEFINITION

Renewable Diesel Fuel provided under this Agreement shall be **R99** and comply with California Code of Regulations §95481, which defines it as a diesel fuel that is produced from nonpetroleum renewable resources but is not a mono-alkyl ester, is intended for use in engines that are designed to run conventional diesel fuel, and is registered as a motor vehicle or fuel additive under 40 Code of Federal Regulations part 79.

##### 2.2 COMPLIANCE WITH STANDARDS & SPECIFICATIONS

Renewable Diesel Fuel provided under this Agreement shall comply with:

- Current *ASTM Standard D 975: Standard Specification for Diesel Fuel Oils* for Grade No. 2-D S15
- All applicable California Air Resources Board and Low Carbon Fuel Standards requirements
- All applicable Cummins and Detroit Diesel transit bus engine fuel requirement

##### 2.3 CERTIFICATIONS, SAMPLING & TESTING

###### 2.3.1 MTD FUEL CONFORMITY TESTING

MTD shall have the right and may perform random sampling of Contractor-delivered fuel for determining conformity with these technical specifications. MTD shall only use qualified third-party laboratories to perform such analysis. Laboratory findings of non-conformity with the specification shall be considered a breach of contract and may be subject to the termination provisions contained in the Agreement.

### 3.0 ORDERING & DELIVERY

#### 3.1 ORDERING FUEL

##### 3.1.1 METHOD & HOURS

Contractor shall provide MTD with a phone number, web site, or other appropriate and reliable means for ordering fuel as needed. At a minimum, such ordering system shall be capable of accepting orders on all non-federal holiday weekdays between 8:00 AM and 5:00 PM Pacific Time. **MTD shall only order fuel in full load capacities (approximately 7,500 gallons).** MTD shall make efforts to ensure that the Underground Storage Tank (UST) to be loaded by Contractor contains adequate available capacity to fully receive the full load although this shall not relieve Contractor of verifying available capacity as described in Section 3.2.2 below.

##### 3.1.2 ESTIMATED VOLUME & FREQUENCY

MTD's estimated annual fuel consumption is 550,000 U.S. gallons. Given MTD's single 20,000 gallon UST and restriction of delivery to non-holiday weekdays, delivery loads will be required approximately every three weekdays. These volume figures are estimates only and subject to change. MTD is under no obligation to purchase a minimum annual volume under the Agreement.

#### 3.2 DELIVERY

##### 3.2.1 LOCATION, TIMEFRAME & HOURS

**Contractor shall deliver all fuel orders to MTD at 550 Olive Street, Santa Barbara, CA no later than two (2) non-federal holiday weekdays following receipt of such order from MTD.** Contractor shall make a concerted effort to restrict delivery times to non-federal holiday weekdays between 8:00 AM and 4:00 PM Pacific Time. Given the MTD facility yard layout and vehicle capacity, deliveries at other times can require MTD vehicle movements and are greatly discouraged. Contractor or its agent shall contact MTD by telephone in advance for deliveries expected outside of this timeframe. Under no circumstances will deliveries be received by MTD between the hours of 12:00 AM and 5:00 AM except in an emergency or as specifically approved in advance by MTD.

##### 3.2.2 DRIVER REQUIREMENTS

Contractor shall require delivery truck driver to physically "stick" the UST and print the Veeder Root tank gauge report before unloading fuel in order to verify available UST capacity. Driver shall also print a tank gauge report after unloading is complete. MTD shall provide the measurement stick and instructions for report printing. Driver shall attach both tank gauge reports to the delivery receipt. Upon completion of fuel unloading, driver shall obtain a receiving signature from MTD's Materials Manager, Steve Hahn, or the delegated Maintenance Department staff member in his absence. It shall be the responsibility of the driver to actively seek such personnel. Only when such personnel are not available shall other MTD employees sign the receipt. One copy of the **MTD-signed** delivery receipt that contains industry standard fuel receipt information shall be left with the MTD signer. **All delivery receipts require a valid MTD employee signature.**

### 4.0 PRICING & TAXES

#### 4.1 FUEL PRICE DETERMINATION

**Contractor shall bill MTD for each gallon of Renewable Diesel Fuel delivered to MTD at the fixed price per gallon stipulated in the Agreement which includes all transportation or other contractor charges and costs.** All applicable governmental taxes and fees shall be listed separately on the invoice.



## 4.2 Taxes, Fees & Exemptions

Due to its status as a California special district public transit operator, MTD is exempt from the California Diesel Fuel Tax (presently \$0.441 per gallon); the Federal Excise Tax on Diesel Fuel (presently \$0.244 per gallon); and the California add-on fuel sales and use tax for diesel fuel (+5.75%). Invoices shall reflect these exemptions. Applicable fees and taxes shall be included as separate line items on each billing invoice. MTD understands that such current billable fees and taxes and the appropriate rates include:

<u>Tax/Fee Description</u>	<u>Present \$/Gallon</u>
Federal LUST Tax	\$0.001
Federal Oil Spill Liability Tax	\$0.002143
CA Inspection Fee	\$0.003237
CA & Local Sales Tax	8.75% (City of Santa Barbara sales tax rate)
CA AB32 Low Carbon Fuel Fee	Fee varies; see method of inclusion below
CA Cap-and-Trade Program Fee	Fee varies; see method of inclusion below

The California Cap-and-Trade Program and AB32 LCFS fees shall be based on the previous day's CAP-AT-THE-RACK and LCFS COST cents per gallon listed under the No2 column posted by OPIS in its Los Angeles, CA OPIS Gross CARB Ultra Low Sulfur Distillate Prices With CAR Cost report. The fees shall be included as separate lines on each invoice. The fee for Saturday, Sunday and Monday pricing will be based on Friday's posted price and prices for holidays will be the same as the most recently posted prices. It shall be the Contractor's responsibility for any subscription or other costs for the OPIS report.

Contractor shall provide MTD with any required exemption forms to prevent inclusion of exempt taxes on Contractor billings. In instances where Contractor is at fault for inclusion of inapplicable fees or taxes on billings, MTD shall have the right to adjust the payment for such billings to remove such charges.

## 5.0 WARRANTY

### 5.1 WARRANTY DESCRIPTION

Contractor shall warrant that fuel delivered to MTD under this Agreement is compatible for use with diesel engines, including Cummins and Detroit Diesel engines, and shall not harm MTD diesel engines. Contractor agrees to reimburse MTD for damages to vehicles, engines or any vehicle systems caused by Contractor fuel that does not comply with this Statement of Work and the technical specifications contained herein.

### 5.2 DEFINITION OF DAMAGES

Damages shall be defined as MTD costs incurred as a result of wrongful actions on the part of the Contractor including but not limited to the delivery of inappropriate fuel into MTD fuel storage tanks. Examples of such damages include costs incurred by MTD for: removal of incorrect fuel from MTD storage tanks systems; repair of vehicular systems due to the use of incorrect fuel; or vehicular accidents, including third-parties claims, due to the use of incorrect fuel.

### 5.3 REPAIR OF DAMAGES

MTD reserves the right to perform the work or contract with a third party to perform the work with reimbursement by the Contractor for all reasonable expenses associated with the damages defined in 5.2 above. MTD shall be reimbursed by the Contractor for the cost of: labor performed by MTD for repair of damages at the actual wage rate plus forty percent (40%) for overhead; materials and supplies required to correct damages at full MTD cost (including taxes and freight); and third party vendor repairs at the full invoice cost incurred by MTD.

**End of Scope of Services Text**

***SANTA BARBARA METROPOLITAN TRANSIT DISTRICT***  
**Request for Qualifications for Renewable Diesel Supply**

***Attachment 3***  
***MTD MASTER AGREEMENT***

**Santa Barbara Metropolitan Transit District**  
***Renewable Diesel Supply***

**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 the supply of renewable diesel fuel (the "Project");
- B. Contractor represents that it has the knowledge and experience to carry out the Project, and desires to carry out the Project pursuant to the terms and conditions hereof, and;
- C. Based upon the representations made by Contractor, MTD desires to retain the services of Contractor to carry out the aforesaid Project, upon the within terms and conditions.

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

- 1. Effect of Recitals. The foregoing recitals are hereby made express provisions of this Agreement.
- 2. FTA Provisions. The Project is funded in part by the Federal Transit Administration of the U.S. Department of Transportation and, as such, this Agreement is subject to the terms and conditions contained in *Federal Transit Administration: Contract Provisions* which is attached hereto as Exhibit "A" and incorporated herein by this reference.
- 3. Public Works Provisions. Not applicable to this agreement.
- 4. Statement of Work. MTD has heretofore issued on [February 21, 2024](#), a statement of work contained in the Request for Qualifications (RFQ) and subsequent Invitation for Bids (IFB) for the Renewable Diesel Supply, a true copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference. [\[if SOW amended, may need to modify\]](#)
- 5. Bid. Contractor has heretofore submitted on [\[date tbd\]](#) 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 a fixed price per gallon of renewable diesel of [\[insert fixed price per gallon\]](#), which is in accordance with Exhibit C".
- 8. Payment. Contractor shall submit invoice to MTD for each fuel delivery. Payment from MTD shall be made to Contractor no later than thirty (30) days after receipt by MTD of a valid invoice, which shall be sent to either: [AP@sbmtd.gov](mailto:AP@sbmtd.gov) or Santa Barbara MTD, Attn: Accounts Payable, 550 Olive Street, Santa Barbara, CA 93101.
- 9. Taxes & Fees. MTD is exempt from the State of California Diesel Fuel Tax and the Federal Excise on Diesel Fuel. Unless specified otherwise in the Agreement, MTD is subject to all other applicable federal, state, and local taxes and fees including California Sales Tax for the City of Santa Barbara. Such applicable taxes and fees shall be included in the Contractor's invoices.
- 10. Project Schedule. Contractor shall deliver renewable diesel to MTD on an as-needed basis beginning July 1, 2024 through [\[date tbd\]](#).

11. Delivery & Freight. Unless specified otherwise in the statement of work, any item provided under this Agreement shall be delivered FOB Santa Barbara to 550 Olive Street, Santa Barbara, CA 93101. Any Project freight and delivery charges shall have been already included in the Contractor's fixed price bid 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 statement of work at the time of delivery or installation shall be replaced by the Contractor without additional cost to MTD. If the Contractor should fail to promptly comply with any order to replace or repair any defective items, services, work or systems, MTD shall have the authority to deduct the cost of such replacement or repair from any compensation due or to become due to the Contractor. Nothing in this section shall limit or restrict any warranty provisions of this Agreement or any exhibits hereto.

15. Acceptance. Terms of Acceptance are contained in the statement of work.

16. Warranty. Pursuant to the warranty provisions contained in the statement of work, the Contractor shall warrant to MTD that, for the specified period after MTD's full acceptance of items, services, work or systems, each shall conform with the requirements hereof and be free of defects. The rights of MTD hereunder are in addition to, and not limited by, the Contractor's standard warranties. Acceptance of items, services, work or systems by MTD, or payment therefor, shall not relieve the Contractor of its obligations thereunder.

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

18. Insurance.

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 or its Subcontractor should or should not maintain for its own protection; and

B. are being, or have been, obtained by Contractor or its Subcontractor in support of Contractor's or its Subcontractor'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 its Subcontractor, 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.

iii. MTD will consider variations from these insurance requirements if it is determined that such variations provide the same essential coverage required herein. Such determination shall be made solely by MTD.

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 board members and 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. If Contractor's Subcontractor is providing the primary coverage, the Subcontractor must name the Contractor and MTD as indicated above.

viii. Waiver of Subrogation. All insurance coverage carried by Contractor or its Subcontractor 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 regardless of whether the insurance is carried by the Contractor or its Subcontractor 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 or its Subcontractor, 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 (if coverage is not supplied, Contractor and on behalf of its Subcontractor confirm they are responsible for these minimum payments and take financial responsibility. MTD reserves the right to require a deposit for up to \$5,000 and may take offset from future payments should a claim be made onto MTD for Medical Expenses as a result of Contractor or its Subcontractor operations). |
- iv. Additional Endorsements.
- A. Personal Injury Liability: The personal injury contractual liability exclusion shall be deleted.
- B. 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.
- 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.
- e. Excess Liability/Umbrella Insurance.
- i. Coverage. Such insurance shall be excess over and be no less broad than all coverages described above and shall include a drop-down provision.
- ii. Form. This policy shall have the same inception and expiration dates and the commercial general liability insurance required above.
- iii. Amount of Insurance. Coverage shall be provided with a limit of not less than \$4,000,000, combined single limit over and above the Commercial General Liability coverage.
- f. Pollution/Environmental Liability Insurance.
- i. Coverage. Such insurance shall cover liability arising out of any sudden accidental pollution and related cleanup costs incurred by the Contractor or its Subcontractor, arising out of work or services, including transportation, to be performed under this Agreement. Such coverage may be satisfied with endorsements to Commercial General Liability, Auto Liability, and/or Excess Liability/Umbrella insurance meeting these requirements.
- ii. Amount of Insurance. Coverage shall be provided with a limit of not less than \$5,000,000, combined single limit.
- g. 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. |



h. Other Insurance. MTD shall have the right, exercisable in its sole judgment at any time by giving prior written notice thereof to Contractor, to require Contractor to increase the limit and coverage amount of any insurance Contractor is required to maintain pursuant to this Agreement to an amount that MTD may, in its sole judgment, deem reasonably sufficient; and purchase other insurance and/or endorsement in such amounts or types as MTD may reasonably require from time to time.

19. Bonding. Not applicable to this agreement.

20. Termination. For applicable terms, refer to Paragraph 21 (Termination) in *Federal Transit Administration: Contract Provisions*, which is attached hereto as Exhibit A.

21. Liquidated Damages. Not applicable to this agreement.

22. Infringement of Patents. The Contractor agrees that it will, at its own expense, defend all suits and proceedings instituted against MTD and pay any award of damages assessed against MTD in such suits or proceedings, insofar as the same are based upon any claim that the items, services, work, systems, or any part thereof, or any tool, or process used in or for the Project, constitutes an infringement of any legal United States copyright or patent. MTD agrees that it will give the Contractor prompt notice in writing of the institution of the suit or proceeding and permits the Contractor through its counsel to defend the same and gives the Contractor all information, assistance and authority necessary for the Contractor to do so. In case said items, services, work, systems, or any part thereof, or any tool, or process used in or for the Project, is in such suit held to constitute infringement and use of same is enjoined, the Contractor shall, at its own expense and at its option, either procure for the MTD the right to continue using said items, services, work, systems, or any part thereof, or any tool, or process used in or for the Project, or replace same with non-infringing equipment, or modify it so it becomes non-infringing.

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

24. Indemnification. The Contractor and any of its Subcontractor shall, to the extent permitted by law protect, indemnify, defend, and hold MTD and its officers, employees and agents, including board members and 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, board members, 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]  
 [contractor city, state & zip]  
 [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 a one-year period thereafter, has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of a contracting party other than MTD.



If any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other parties, even if such interest would not be considered a conflict of interest under Article 4, Chapter 1, Divisions 4 and 4.5, Title I of the Government Code of the State of California.

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

33. Audit and Inspection of Records. The Contractor shall agree that all materials supplied and services performed under the Project, facilities used in connection therewith, and records and documentation thereunto appertaining shall be subject to inspection, test, or audit by duly authorized representatives of MTD and the State of California. The Contractor agrees to maintain all required records relating to the Project for at least three years after MTD makes final payment and all other pending matters are closed.

34. Equal Employment Opportunity. For applicable terms, refer to Paragraph 24 (Civil Rights Requirements) in *Federal Transit Administration: Contract Provisions*.

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) or its Subcontractor certifies that Contractor and its Subcontractor are 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

***SANTA BARBARA METROPOLITAN TRANSIT DISTRICT***  
**Request for Qualifications for Renewable Diesel Supply**

***Attachment 4***  
***FTA CONTRACT PROVISIONS***

# FEDERAL TRANSIT ADMINISTRATION CONTRACT PROVISIONS

## *Renewable Diesel Supply & Contractor Name*

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- 1. FLY AMERICA REQUIREMENTS (NOT APPLICABLE TO THIS AGREEMENT)**
- 2. BUY AMERICA REQUIREMENTS (NOT APPLICABLE TO THIS AGREEMENT)**
- 3. CHARTER BUS & SCHOOL BUS REQUIREMENTS (NOT APPLICABLE TO THIS AGREEMENT)**

**4. CARGO PREFERENCE REQUIREMENTS**

(a) The Contractor agrees to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

(b) The Contractor agrees to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading.).

The Contractor agrees to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**5. SEISMIC SAFETY REQUIREMENTS (NOT APPLICABLE TO THIS AGREEMENT)**

**6. ENERGY CONSERVATION REQUIREMENTS**

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

**7. CLEAN WATER REQUIREMENTS**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000.

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

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

**10. LOBBYING**

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

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

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

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

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

[Note: The Contractor shall have previously submitted to MTD a separately signed Lobbying Certification containing the above language for itself and any subcontracts exceeding \$100,000 as a condition of contract award.]

## 11. ACCESS TO RECORDS & REPORTS

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

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

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

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

## 12. FEDERAL CHANGES

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement

between MTD and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **13. BONDING REQUIREMENTS (NOT APPLICABLE TO THIS AGREEMENT)**

### **14. CLEAN AIR**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

### **15. RECYCLED PRODUCTS**

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

The requirements include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **16. DAVIS-BACON & COPELAND ANTI-KICKBACK ACTS (NOT APPLICABLE TO THIS AGREEMENT)**

### **17. CONTRACT WORK HOURS & SAFETY ACT (NOT APPLICABLE TO THIS AGREEMENT)**

### **18. ACCESS REQUIREMENTS (NOT APPLICABLE TO THIS AGREEMENT)**

### **19. NO GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

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

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

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

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



penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

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

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

## 21. TERMINATION

(a) Termination for Convenience: MTD may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in MTD's best interest. The Contractor shall be paid its costs, including any applicable contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to MTD to be paid the Contractor. If the Contractor has any property in its possession belonging to MTD, the Contractor will account for the same, and dispose of it in the manner MTD directs.

(b) Termination for Default: If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, MTD may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by MTD that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events not the fault of or are beyond the control of Contractor, MTD, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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

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

## 22. GOVERNMENT-WIDE DEBARMENT & SUSPENSION

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

proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **23. PRIVACY ACT (NOT APPLICABLE TO THIS AGREEMENT)**

### **24. CIVIL RIGHTS REQUIREMENTS**

(a) Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity: The following equal employment opportunity requirements apply to the underlying contract:

(1) Race, Color, Religion, Sex, Sexual Orientation, Gender Identity, or National Origin: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Age: In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

### **25. BREACHES & DISPUTE RESOLUTION**

Paragraph 30 of the *MTD Master Agreement* regarding disputes shall be deemed satisfactory to meet the federal requirements for dispute resolution. The Contractor agrees to include the requirements of said Paragraph 30 in all subcontracts.



**26. PATENT & RIGHTS IN DATA (NOT APPLICABLE TO THIS AGREEMENT)****27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS (NOT APPLICABLE TO THIS AGREEMENT)****28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

(a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. MTD's overall goal for DBE participation is posted at <https://sbmtd.gov/about/doing-business/>. A separate contract goal has not been established for this procurement.

(b) The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as MTD deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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

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

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

**29. NOTIFICATION OF LEGAL MATTERS TO THE FTA**

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the FTA Chief Counsel and FTA Region 9 Chief Counsel.

(a) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(b) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award funding this Agreement and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(c) The Contractor must promptly notify the U.S. DOT Inspector General in addition to the FTA Region 9 Chief Counsel if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor.

(d) The Contractor agrees to include this clause in each subcontract and any lower tier subcontracts financed in whole or in part with Federal assistance provided by the FTA under this Agreement.

### **30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

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

### **31. DRUG & ALCOHOL TESTING (NOT APPLICABLE TO THIS AGREEMENT)**

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

### **33. BUILD AMERICA, BUY AMERICA ACT (NOT APPLICABLE TO THIS AGREEMENT)**

### **34. TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

The prohibition on certain telecommunications and video surveillance services or equipment applies to all federally funded third-party contracts. MTD is prohibited from using federal funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

### **35. SAFE OPERATION OF MOTOR VEHICLES**

**Seat Belt Use:** The Contractor agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and (2) Including a "Seat Belt Use" provision in each third-party agreement related to this Contract.

**Distracted Driving, Including Text Messaging While Driving:** The Contractor agrees to implement (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and (3) The following U.S. DOT Special Provision

pertaining to Distracted Driving:

- (i) Safety. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award;
- (ii) Recipient Size. The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and
- (iii) Extension of Provision. The Contractor agrees to include a Distracted Driving, Including Text Messaging While Driving in its third-party agreements, and encourage its third-party participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

**End of Federal Contract Clauses**