



Metropolitan Transit System

STANDARD AGREEMENT

FOR

MTS DOC. NO. [Subject]

[Title]

THIS AGREEMENT is entered into this _____ day of _____, 2025 in the State of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following, hereinafter referred to as "Contractor":

Name: _____ Address: _____

Form of Business: _____ (Corporation, Partnership, Sole Proprietor, etc.) City State Zip

Telephone: _____ Email: _____

Authorized person to sign contracts _____ Name Title

The Contractor agrees to provide services with goods as specified in the conformed Scope of Work/Technical Specification (Exhibit A), Contractor's Cost/Pricing Form (Exhibit B), and in accordance with the Standard Agreement, including Standard Conditions (Exhibit C), Federal Requirements (Exhibit D), and Forms (Exhibit E), Forms (Exhibit D), and Policy 44C Travel Guidelines for Contractors (Exhibit F).

The contract term is for up to (#) years effective MM/DD/YYYY through MM/DD/YYYY.

Payment terms shall be net 30 days from invoice date. The total cost of this contract shall not exceed \$_____ without the express written consent of MTS.

The contract term is for up to # base years and # option years, exercisable at MTS's sole discretion, for a total of # years. Base period shall be effective MM/DD/YYYY through MM/DD/YYYY and option years shall be effective MM/DD/YYYY through MM/DD/YYYY, if exercised by MTS.

Payment terms shall be net 30 days from invoice date. The total cost of this contract shall not exceed \$_____ for the base years and \$_____ for the option years, for a contract total not to exceed \$_____ without the express written consent of MTS.



SAN DIEGO METROPOLITAN TRANSIT SYSTEM	CONTRACTOR NAME
<p>By: _____ Sharon Cooney, Chief Executive Officer</p> <p>Approved as to form:</p> <p>By: _____ Karen Landers, General Counsel</p>	<p>By _____</p> <p>Title: _____</p>

SAMPLE

STANDARD CONDITIONS

7.1. COMPLETE AGREEMENT

This Agreement, including all applicable terms, conditions, and specifications, is the entire agreement of the parties and no attempted modification shall be binding unless in writing and signed by MTS and the Contractor.

MTS reserves the right to use alternative vendors/contractors at any time for any reason.

7.2. COUNTERPARTS

This Agreement may be executed in any number of counterparts. All such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original thereof.

7.3. SURVIVAL

Notwithstanding MTS's acceptance of the services and payment therefore, Contractor shall remain obligated under all clauses of this Agreement which expressly, or by their nature, extend beyond and survive such acceptance and payment.

7.4. DUTY TO CLARIFY OBVIOUS AMBIGUITY

The Contractor is required to seek clarification of any obvious ambiguity contained in the contract documents. Failure to do so will result in an interpretation of the ambiguous provision favorable to MTS should a dispute later arise concerning that provision.

7.5. NOTICES

All notices or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Post Office, addressed as follows:

To MTS:

San Diego Metropolitan Transit System (MTS)
Attention: Chief Executive Officer
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490

To Contractor:

As shown on front page.

7.6. CHANGES IN WORK

No payment for changed or additional work shall be made unless the changed or additional work has first been approved in writing by the MTS Project Manager and the parties have agreed upon the appropriate adjustment, if any, to the payment schedule and maximum payment amount for the changed or additional work. The written notice of potential change in work be given to MTS prior to the time Contractor shall have performed the work within fifteen (15) days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential change in work.

The MTS Project Manager may order changes or additions to the scope of work. Whether a change or addition to the scope of work is proposed by the Contractor or ordered by the MTS Project Manager, the parties shall in good faith negotiate an appropriate adjustment, if any, to the payment schedule and maximum payment for the changed or additional work. An approved change or addition, along with the payment adjustment, if any, will be effective upon an amendment to this contract executed by both parties. The amendment shall not render ineffective or invalidate unaffected portions of this contract.

7.7. SEVERABILITY

If any term, provision, or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

7.8. TERMINATION OF AGREEMENT

7.8.1. TERMINATION FOR CONVENIENCE

Performance under this agreement may be terminated by MTS in accordance with this clause in whole or, from time-to-time, in part, whenever MTS shall elect. Any such termination shall be affected by delivery to Contractor of a Notice of Termination specifying the extent to which performance under this agreement is terminated, and the date upon which such termination becomes effective. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

- A. immediately discontinue performance on the date and to the extent specified in the notice;
- B. place no further orders for materials other than as may be necessarily required for completion of such portion of the agreement that is not terminated;
- C. promptly make every reasonable effort to either obtain cancellation on terms satisfactory to MTS of all orders to Contractor's suppliers to the extent they relate to the performance of that portion terminated, or upon MTS concurrence assign to MTS those orders; and
- D. assist MTS, upon request, in the maintenance, protection and disposition of property acquired by MTS under this agreement.

If claimed in writing within 30 calendar days after Notice of Termination, MTS will pay to Contractor an equitable adjustment to include (without duplication of any item):

- A. all amounts due and not previously paid to Contractor for goods completed in accordance with this agreement prior to such notice;
- B. a reasonable amount for any goods and materials then in production; provided that no such adjustment be made in favor of Contractor with respect to any goods which are Contractor's standard stock;
- C. costs of settling and paying supplier's claim arising out of the canceled orders; and

- D. a reasonable profit for costs incurred in the performance of that portion terminated; provided, however, that if it appears that Contractor would have sustained a loss on the entire agreement had it been completed, no profit shall be included.

The total sum to be paid to Contractor under this clause, shall not exceed the total order price as reduced by the amount of payments otherwise made, and as further reduced by the order price of that portion not terminated, and will not include any consideration for loss of anticipated profits on the terminated portion all claims for which seller agrees to waive.

7.8.2. TERMINATION FOR DEFAULT (SERVICES)

In case of Contractor breach or failure to perform, MTS reserves the right to terminate the contract for default. MTS may award the contract to the next lowest responsive, responsible Proposer, solicit new bids, or pursue any other remedy authorized by law.

In addition to any remedy authorized by law, money due to the Contractor under and by virtue of contract, as shall be considered necessary by MTS, may be retained by MTS until disposition has been made of such suits or claims for damages. The retention of money due to the Contractor shall be subject to the following:

- A. MTS will give the Contractor ten (10) days' notice of its intention to retain funds from any partial payment, which may become due to the Contractor prior to acceptance by MTS of the contract. Retention of funds from any payment made after acceptance may be made without such prior notice to the Contractor.
- B. No retention of additional amounts out of partial payments will be made if the amount to be retained does not exceed the amount being withheld from partial payments.
- C. If MTS has retained funds, and it is subsequently determined that MTS is not entitled to be indemnified and saved harmless by the Contractor in connection with the matter for which such retention was made, MTS shall be liable for interest earned on the amount retained for the period of such retention.

MTS may terminate the contract by serving a notice of termination on the Contractor. Notice shall set forth the manner in which the Contractor is in default, and provide the Contractor with ten (10) days' time to cure the default to the satisfaction of MTS. This cure period may be adjusted if the parties so agree in writing. If MTS determines after the cure period that the default is not cured, MTS will issue a "show cause" letter to the Contractor requesting from the Contractor reasons why this contract should not be terminated. If MTS does not find that the Contractor has demonstrated sufficient reason for its failure to cure, the contract shall be deemed terminated. The Contractor shall only be paid the contract price for supplies received and accepted, or services performed in accordance with the manner set forth in the contract. If MTS determines that the Contractor had an excusable reason for not performing such as a strike, fire, flood, or other events, which are not the fault of, or beyond the control of the Contractor, MTS may allow the Contractor to continue work or terminate the contract for convenience.

TERMINATION FOR DEFAULT (GOODS)

MTS may terminate the whole or any part of Contractor's performance in any one of the following circumstances:

- A. if Contractor fails to make delivery or fails to perform within the time specified herein or any extension thereof; or
- B. if Contractor delivers nonconforming goods; or
- C. if Contractor fails to perform in accordance with the provisions of this Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms.

In the event of any such failure, MTS will provide Contractor with notice of the nature of the failure and MTS's intention to terminate for default. In the event Contractor does not cure such failure within ten (10) calendar days of such notice, MTS will provide Contractor with written Notice of Termination for Default.

In the event MTS terminates as provided herein, MTS may procure, upon such terms, and in such manner as MTS may deem appropriate, supplies or services similar to those so terminated, and Contractor shall be liable to MTS for any excess costs for such similar supplies or services; and Contractor shall continue the performance of this Agreement to the extent not terminated under the provisions of this clause.

In the event of Contractor's default, Contractor agrees to mitigate damages by cooperating with MTS in transferring information and disposing of goods in process or MTS's materials as MTS may reasonably request. If after Notice of Termination for Default it is determined for any reason that Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to the Termination for Convenience clause.

7.9. ASSIGNABILITY

- A. By MTS. This contract is assignable, in whole or in part, to any other government agency, including the North County Transit District and/or the San Diego Association of Governments and/or the Metropolitan Transit System. The party wishing to exercise the assignment (also known as a "piggyback") shall perform an independent cost estimate to determine fair and reasonable pricing, and shall enter into its own contract with the vendor based upon the terms and conditions of this Request for Proposal. Any assignment or piggyback shall comply with Federal Transit Administration (FTA) requirements if applicable. MTS shall have no responsibility or liability for any such assignment or piggyback.
- B. By Contractor. Any attempt by Contractor to assign, subcontract, or transfer all or part of this Agreement shall be void and unenforceable without MTS' prior written consent; which consent shall not be unreasonably withheld. Any such consent shall not relieve Contractor from full and direct responsibility for all services performed prior to the date of assigning, subcontracting, or transferring this Agreement. In the event of an authorized assignment by MTS or applicable law, all terms, conditions, and provisions of this contract shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties.

Any assignment of this Agreement or of any rights hereunder of hypothecation thereof in any manner, in whole or in part, without the prior written consent of MTS shall be null and void. Notwithstanding the foregoing, Contractor may assign monies due or to become due under this Agreement, and such assignments will be recognized by MTS, provided that written notice thereof is given to MTS at least ten (10) calendar days before payment is due. Any assignment of monies shall be subject to proper setoffs in favor of MTS to all deductions provided for in this Agreement. All money withheld, whether assigned or not, shall be subject to being used by MTS for the completion of the Agreement, in the event Contractor should be in default therein.

In the event of an authorized assignment by MTS or applicable law, all terms, conditions, and provisions hereof shall inure to and bind hereto their and each of their respective heirs, executors, administrators, successors, and assigns.

7.10. STANDARD OF PERFORMANCE

Contractor's services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar conditions. By delivery of completed work, Contractor certifies that the work conforms to the requirements of this contract and all applicable federal, state and local laws. If Contractor is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Contractor shall maintain that license, certification, registration or other similar requirement throughout the term of this Contract.

7.11. TIME

The Contractor acknowledges that timely performance is an important element of this Agreement. Accordingly, the Contractor shall put forth its best professional effort to complete its services in accordance with the agreed-upon schedule.

7.12. EXCUSABLE DELAYS / FORCE MAJEURE

Timely performance and deliveries are essential to this Agreement. However, Contractor will not be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition, which is beyond Contractor's reasonable control, without Contractor's fault or negligence. Acts of God, such as storms or floods, as well as government priorities, acts of civil or military authorities, fires, strikes, epidemics, war or riot, are examples of events which will be excusable for being beyond Contractor's reasonable control only upon fulfillment of the following conditions: (a) within seven (7) calendar days of the commencement of any excusable delay, Contractor shall provide MTS with written notice of the cause and extent thereof, as well as request for a schedule extension for the estimated duration thereof; and (b) within seven (7) calendar days of the cessation of the event causing delay, Contractor shall provide MTS with written notice of the actual delay incurred, upon receipt of which the date of promised delivery shall be extended for the time actually lost by reason of an excusable delay.

7.13. SUSPENSION OF WORK

MTS may at any time and for any reason within its sole discretion issue a written order to the Contractor suspending, delaying or interrupting all or any part of the Work for a specified period

of time. The Contractor shall comply immediately with any such written order and take all reasonable steps to minimize costs allocable to the Work covered by the suspension during the period of work stoppage. Contractor shall continue the Work that is not included in the suspension and shall continue such ancillary activities as are not suspended. The Contractor shall resume performance of the suspended Work upon expiration of the notice of suspension, or upon direction from MTS. The Contractor shall be allowed an equitable adjustment in the Contract price and/or an extension of the Contract time, to the extent that cost or delays are shown by the Contractor to be directly attributable to any suspension. However, no adjustment shall be made under this section for any suspension, delay or interruption due to the fault or negligence of the Contractor, or for which an equitable adjustment is provided for, or excluded under any other term or condition of the Contract. As soon as reasonably possible but no later than forty-five (45) calendar days, or any other period of time agreed to by the parties, after receipt of the written suspension of work notice, the Contractor shall submit to the Contracting Officer a detailed price and schedule Proposal for the suspension, delay or interruption.

7.14. INSPECTION AND TESTING

Except as otherwise expressly provided herein, Contractor shall be responsible for all inspection and testing, and agrees to strictly follow the standards of quality specified by MTS in addition to those customary in the industry. MTS shall be afforded free access to plants of Contractor and its suppliers in order to make surveillance inspections to monitor compliance with contractual quality requirements, and MTS's right to inspect, examine, and test the goods shall extend through the manufacturing process, the time and shipment, and a reasonable time after arrival at the ultimate destination. Contractor's failure to adhere to the standards of quality required under this Agreement shall be deemed to be reasonable grounds for insecurity justifying a written demand from MTS that Contractor provide adequate assurance of Contractor's ability to meet said standards.

Goods shall not be deemed accepted until finally inspected and examined at final destination.

The making or failure to make any surveillance inspection or examination of, payment for, or acceptance of the goods shall in no way impair MTS's right to reject nonconforming goods, or to avail itself of any other remedies to which MTS may be entitled, notwithstanding MTS's knowledge of the nonconformity, its substantiality, or the ease of its discovery.

7.15. INDEPENDENT CONTRACTOR

Contractor hereby declares that it is engaged in an independent business and agrees that in the performance of this Agreement it shall act as an independent contractor and not as an employee of MTS. Contractor has and hereby retains full control of all the employment, compensation, and discharge of all employees of Contractor assisting in its performance hereunder. Contractor shall be fully responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding tax, and all other laws and regulations governing such matters. Contractor shall be responsible for its own acts and those of its agents and employees during the term of this Agreement. MTS shall be responsible for its own acts and those of its agents and employees during the term of this Agreement. Except as otherwise specifically provided, as an independent contractor, Contractor is solely responsible for determining the means and methods

of performing the services described in the scope of work. Contractor shall perform the work contemplated with resources available within its own organization.

7.16. THIRD PARTY BENEFICIARIES

No provisions of the Contract shall in any way inure to the benefit of any third party, including the public at large, so as to constitute such person a third-party beneficiary of the Contract or of any one or more of the terms and conditions of the Contract or otherwise give rise to any cause of action in any person not a party to the Contract, except as expressly provided elsewhere in the Contract

7.17. SUBCONTRACTORS

Contractor agrees to bind every subcontractor to the terms of the Agreement as far as such terms are applicable to subcontractor's portion of the Work. Contractor shall be as fully responsible to MTS for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and MTS. MTS reserves the right to approve all subcontractors. MTS's approval of any subcontractor under this Agreement shall not in any way relieve Contractor of its obligations under this Agreement.

7.18. INDEMNITY

As between MTS and Contractor, Contractor is deemed to assume responsibility and liability for, and Contractor shall defend, indemnify and hold harmless, MTS, SDTI, SDTC, SD&AE, SD&IV and any and all of its directors, officers, agents or employees from and against any and all claims, loss, damage, charge, or expense, whether direct or indirect, which MTS, SDTI, SDTC, SD&AE, SD&IV or such directors, officers, agents or employees may be put or subjected, by reason of any damage, loss, or injury of any kind or nature whatever to persons or property caused by or resulting from or in connection with any negligent act or action, or any neglect, omission, or failure to act when under a duty to act on the part of Contractor or any of its officers, agents, servants, employees or subcontractors in its or their performance under this Agreement. In addition to any other remedy authorized by law, so much of the money due Contractor under this Agreement as shall be considered necessary by MTS may be retained until disposition has been made of any claim for damages.

7.19. DISPUTES, CLAIMS, AND RESOLUTION

MTS and the Contractor agree that every effort shall be made to resolve any dispute arising under this Agreement informally through their designated representatives. If the informal efforts are unsuccessful, then either party may request mediation by submitting a written request signed by an officer with the authority to bind the Contractor or MTS. Within five (5) business days of the request of any party, the parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. If the parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may arrange for the office of the American Arbitration Association in downtown San Diego, California, to perform the mediation. The initiating party shall then schedule the mediation so that it is conducted within fifteen (15) business days of the mediator's appointment. The costs of the mediation and

fees of the mediator, if any, shall be borne by the requesting party. Any dispute not resolved through the mediation may proceed to litigation in a court of competent jurisdiction in the County of San Diego, State of California, unless the parties agree in writing to submit the dispute to binding arbitration.

Should the Contractor suffer any injury or damage to person or property because of any alleged act or omission of MTS, or if any of Contractor's employees, agents, or others for whose acts the Contractor is legally liable suffers any injury or damages to person or property because of any alleged act or omission of MTS, a written claim for damages shall be filed with the MTS Office of General Counsel in accordance with the provisions of California Government Code section 900 et seq.

The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by MTS or Contractor shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder except as may be specifically agreed to in writing.

7.20. NONWAIVER

Failure of MTS to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein, or by law, or to properly notify Contractor in the event of breach, or the acceptance of payment for any goods hereunder, or review of design, shall not release Contractor from any of the warranties or obligations of this agreement, and shall not be deemed a waiver of any right of MTS to insist regardless when shipped, received, or accepted or as to any prior or subsequent default hereunder, nor shall any revision of this agreement by MTS operate as a waiver of any of the terms hereof. A requirement that a Contractor's document be submitted for or subject to "authorization to proceed," "approval," "acceptance," "review," "comment," or combinations of such words or words of like import shall mean, unless the context clearly indicates otherwise, that Contractor shall, before implementing the information in the document, submit the document, obtain resolution of any comments, and obtain written authorization from MTS to proceed, and shall mean that a complete check will be performed. Authorization to proceed shall not constitute acceptance or approval of design details, calculations, analyses, test methods, or materials developed or selected by Contractor and shall not relieve Contractor from full compliance with contractual obligations.

7.21. GOVERNING LAW AND CHOICE OF FORUM

The definition of terms used, interpretation of this Agreement, and rights of all parties hereunder shall be determined in accordance with the laws of the State of California.

Any action or proceeding to enforce or relating to this Agreement shall be brought exclusively in the federal or state courts located in San Diego County, California, and the Contractor and MTS hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding.

7.22. LITIGATION EXPENSES

Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party.

7.23. [NOT APPLICABLE] INSURANCE

Contractor will include the contract number on all insurance-related correspondence, i.e., the insurance certificate itself.

All policies required shall be issued by companies who are licensed or approved to do business in the State of California and hold a current policyholder's alphabetic and financial-size category rating of not less than A-VI, in accordance with A.M. Best.

MTS utilizes the services of a third-party insurance monitoring company. As a condition of contract award, Contractor shall submit any required insurance policies to the third-party monitoring company of MTS' choosing.

7.23.1. COVERAGE REQUIRED - ALL CONTRACTS

A. Liability

1) Commercial General Liability

At all times during this contract and, with respect to Products and Completed Operations Liability, for twelve (12) months following the acceptance of the work by MTS, Contractor agrees to maintain Commercial General Liability Insurance utilizing Insurance Services Office (ISO) coverage form CG0001, edition date 10/01 or later, or an equivalent form and with insurance companies acceptable to MTS. The coverage shall contain no restricting or exclusionary endorsements with respect to the performing of services described in the scope of work.

All such policies shall name in the endorsement San Diego Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego and Arizona Eastern Railway (SD&AE), San Diego and Imperial Valley Railroad (SD&IV), and San Diego Transit Corporation (SDTC), their directors, officers, agents, and employees as additional insureds as their interests may appear. Furthermore, an endorsement will be required demonstrating that the standard railroad exclusionary language has been removed as applicable.

2) Automobile Liability

At all times during this contract, Contractor agrees to maintain Automobile Liability Insurance for bodily injury and property damage including coverage for all owned, non owned, and hired vehicles.

3) Workers' Compensation/Employer Liability

At all times during this contract, Contractor agrees to maintain Workers' Compensation and Employers' Liability Insurance in compliance with the applicable statutory requirements. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver.

7.23.2. ADDITIONAL COVERAGES REQUIRED (AS INDICATED. WHERE THERE IS A CHECKMARK, THE COVERAGE IS REQUIRED)

(1) Primary and Non-Contributory Insurance

Contractor agrees that all general liability coverages required under this insurance section are PRIMARY and that any insurance of MTS, SDTI, SD&AE, SD&IV, and SDTC shall be excess and noncontributory (endorsement required).

(2) Owner-Provided Builder's Risk

MTS will provide Builder's Risk Insurance on a special form basis, excluding the perils of earthquake and flood, at a limit of not less than the full replacement value of the work and covering the work and all materials and equipment to be incorporated therein, including property in transit elsewhere, and insuring the interests of the Contractor, subcontractors, materialmen, and MTS, SDTI, SD&AE, SD&IV, SDTC, MTS's contractor for design, and MTS's contractor for construction management. However, Contractor is responsible for the portion of any loss that is within the deductible amount of this Builder's Risk Insurance, which is currently at \$50,000 but is subject to change.

(3) Railroad Protective Liability and CG 24 17 Endorsement for CGL Policy - Required

The CGL policy must contain the following endorsement: Contractual Liability Railroads ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage). Furthermore, Contractor shall maintain a Railroad Protective Liability coverage with limits of not less than \$X each occurrence and \$X annual aggregate, naming MTS as the named insured on the policy.

(4) Professional Liability

At all times during this contract, and for twelve (12) months following acceptance of work by owner, Contractor agrees to maintain Professional Liability Insurance with respect to services or operations under this Agreement.

(5) Pollution Legal Liability

At all times during this contract, and for twenty-four (24) months following, Contractor agrees to maintain Pollution Legal Liability Insurance with respect to services or operations under this Agreement. The extended discovery period must be no less than twenty-four (24) months.

(6) Contractor Equipment

At all times during this contract, Contractor agrees to maintain Contractor's Equipment Insurance on a special form basis covering equipment owned, leased, or used by Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless MTS for any loss or damage to its equipment.

(7) Installation Floater

At all times during this contract, Contractor agrees to maintain Installation Floater Insurance on a special form basis covering property owned or provided by Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless these entities for any loss or damage to its property.

(8) Garage Keeper's Legal Liability & Automobile Portion

At all times during this contract, Contractor agrees to maintain Garage Keeper's Legal Liability as well Automobile Portion which covers the risk of loss or damage to MTS vehicles while in the care, custody or control of Contractor. Automobile portion shall cover the Contractor in the event of a vehicle accident while they are driving an MTS vehicle, which results in a third party claim of physical damage or bodily injury.

(9) Crime Fidelity Insurance

At all times during this contract, Contractor agrees to maintain Crime Fidelity Insurance with respect to services or operations under this agreement. The coverage should include the following:

- Employee dishonesty/theft
- Theft, disappearance and destruction on the premises
- Theft, disappearance and destruction while in transit
- Forgery/alteration

(10) Umbrella or Excess Liability (if required to meet liability limits above)

Contractor agrees that any Umbrella or Excess Liability Policy utilized to provide the required limits of liability shall contain coverage at least as broad as that provided by the General Liability Policy, and be written for a term concurrent with the General Liability Policy.

(11) Property Insurance

Contractor is responsible to insure physical damage coverage at replacement cost value on the rolling stock (i.e., revenue and non-revenue vehicles) it operates. [Note: MTS insures the buildings in which the fixed route contract operates.]

(12) Cyber and Privacy Liability, including Technology Errors and Omissions

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring

expenses. Coverage shall also include Technology Professional Liability Errors & Omissions appropriate to the Consultant's profession and work hereunder

7.23.3. MINIMUM POLICY LIMITS REQUIRED

MINIMUM POLICY LIMITS REQUIRED

	Combined Single Limit (CSL)
Commercial General Liability (Per Occurrence):	\$2,000,000
(General Aggregate)	\$4,000,000
(Completed Operations & Products Aggregate)	\$2,000,000
Automobile Liability: (Combined Single Limit)	\$2,000,000
Worker's Compensation:	Statutory Limits
Employer's Liability per Accident /or Disease:	\$1,000,000

2. Additional Coverages (as indicated under Additional Coverages Required Section):

<input checked="" type="checkbox"/> B (1) Primary and Non-Contributory Insurance	_____
<input type="checkbox"/> B (2) Owner Provided Builder's Risk	Replacement Cost
<input checked="" type="checkbox"/> B (3) Railroad Protective (Per Occurrence)	\$
Railroad Protective (General Aggregate)	\$
<input type="checkbox"/> B (4) Professional Liability	\$
<input type="checkbox"/> B (5) Pollution and Legal Liability	\$
<input type="checkbox"/> B (6) Contractor Equipment	Replacement Cost
<input type="checkbox"/> B (7) Installation Floater	Replacement Cost
<input type="checkbox"/> B (8) Garage Keeper's Legal Liability & Automobile Portion	_____
(Combined Single Limit (CSL))	(Per Occurrence)
<input type="checkbox"/> B (9) Crime Fidelity Insurance	\$
<input type="checkbox"/> B (10) Umbrella or Excess Liability (if required to meet liability limits above)	\$
<input type="checkbox"/> B (11) Property Insurance	\$
<input type="checkbox"/> B (12) Cyber Security Liability Insurance	\$
(per occurrence or claim)	_____
(Aggregate)	\$

7.23.4. NOTICE OF POLICY CHANGES

Contractor shall not amend or cancel the insurance policy and coverage required by this Agreement without providing MTS with at least thirty (30) days prior written notice. Contractor shall notify MTS within ten (10) days of insurer-initiated material amendments or cancellations to the insurance coverage required by this Agreement. Under no circumstances shall these notice provisions be deemed a waiver of the insurance requirements set for herein. Any material changes in or cancellation of the insurance policy on file with MTS pursuant to the insurance requirements will result in an immediate stop work order until proof of substitute coverage meeting the requirements of this Agreement is provided to MTS. In the alternative, in MTS' sole discretion, MTS retains the right to

declare Contractor in default and immediately terminate this Agreement if the insurance coverage required is cancelled, otherwise lapses or fails to meet the coverage limits at any time, and for any duration, during the term of this Agreement.

7.23.5. EVIDENCE REQUIRED

Within ten (10) working days following receipt of notice that a contract has been awarded, Contractor shall have provided the MTS Contracts Specialist with satisfactory certification by a qualified representative of the Insurer(s) that Contractor's insurance complies with all provisions in this insurance section.

7.23.6. SPECIAL PROVISIONS

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by MTS, SDTI, SD&AE, SD&IV, and SDTC, or their insurance Contractor(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

MTS reserves the right to withhold payments to Contractor in the event of material noncompliance with the insurance requirements outlined above.

7.24. [NOT APPLICABLE] LIQUIDATED DAMAGES

General

Liquidated damage requirements are appropriate if the parties to a contract may reasonably expect to incur damages in the form of increased Project costs resulting from the late completion of the contract, and if the extent or amount of such damages would be difficult or impossible to determine after the delay has occurred. Accordingly, any liquidated damages for this contract shall be at a specific rate per day for each day of overrun in contract time; and the rate will be specified in the third-party contract, and will comply with any other special liquidated damages restrictions FTA might impose. Any liquidated damages recovered shall be credited to the Project account involved unless the Federal Government permits otherwise.

Rates

MTS has established a liquidated damage rate of \$.

Appeal Process

If the Contractor feels liquidated damages are being imposed unjustly, the Contractor can file an appeal with the Contract Officer within twenty-four (24) hours of the notification of impending liquidated damages. The letter must provide details of the situation and why the Contractor feels the liquidated damages are unjust. The Contract Officer shall review the situation, and if necessary, meet with the Contractor to provide an opportunity to state their reasons why liquidated damages should not be assessed. The Contract Officer shall render a decision.

If the Contractor feels the decision is not acceptable and the situation warrants further consideration, appeal reconsideration may be filed with the Manager of Procurement. The

Manager of Procurement shall review the reconsideration, and a final determination shall be made. The decision of the Manager of Procurement shall be final. No other appeals shall be heard for this particular incident.

7.25. PRICE AND PAYMENT

The total price herein specified, unless otherwise expressly stated, shall include all taxes of any kind which either party is required to pay with respect to the sale of the goods covered by this Agreement, including sales and use taxes, and shall include all charges and expenses for customs duties, freight charges, inspection, testing, packaging and loading unless specifically excluded.

Payment will be made as set forth in this Agreement; however, payments may be withheld or portions thereof may be deducted or setoffs may be made against Contractor if Contractor is not performing work in accordance with the applicable provisions of this Agreement. The time for payment of invoices or for accepting any discounts offered shall run only from the date of receipt of correct invoices with required certification documents by MTS.

ADVANCE PAYMENT IS NOT ALLOWABLE.

7.26. CONSIDERATION PAID (SERVICES)

MTS shall reimburse the Contractor for actual costs (including labor costs, employee benefits, overhead, and other direct costs) incurred by the Contractor in performance of the work, in an amount not to exceed \$____. Actual costs shall not exceed the estimated wage rates and other costs set forth in the Contractor's proposal.

In addition, MTS shall pay the Contractor a fixed fee of \$____. Said fixed fee shall not be altered unless there is a significant alteration in scope, complexity, or character of the work to be performed.

Fees and all other charges will be billed monthly as the work progresses, and the net amount shall be due at the time of billing.

Total expenditures made under this contract, including the fixed fee, shall not exceed the sum of \$____.

Payment will be made as set forth in this Agreement; however, payments may be withheld or portions thereof may be deducted or setoffs may be made against Contractor if Contractor is not performing work in accordance with the applicable provisions of this Agreement. The time for payment of invoices or for accepting any discounts offered shall run only from the date of receipt of correct invoices with required certification documents by MTS.

MTS does not reimburse travel expenses unless expressly permitted within the scope. If travel expense reimbursement is permitted within the scope, reimbursement for transportation and subsistence costs shall be in accordance with MTS Board Policy No. 44-C.

7.27. COST PRINCIPLES

Contractor and any subcontractors agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual project cost items.

Contractor and its subcontractors shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred project costs and matching funds by line item for the project. The accounting system of Contractor and its subcontractors shall conform to Generally Accepted Accounting Principles (GAAP) and enable the determination of incurred costs at interim points of completion.

Any costs for which payment has been made that are determined by a subsequent audit to be unallowable under the provisions above are subject to repayment by the Contractor to MTS.

7.28. PROMPT PROGRESS PAYMENT AND RETENTION

Contractor or Subcontractor shall pay any Subcontractor no later than seven (7) business days from the receipt of each progress payment from MTS. No retainage will be held by MTS from progress payments due to the Contractor. Any retainage kept by the Contractor or by a Subcontractor must be paid in full to the Subcontractor in seven (7) business days after the Subcontractor's work is satisfactorily completed. Any delay or postponement of a progress payment or retainage to the Subcontractor over 30 calendar days may take place only for good cause and with MTS's prior written approval. Failure to comply with this provision will constitute noncompliance, which may result in the application of legal and contract remedies, including, but not limited to, prime contractor not being reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the Contractor or Subcontractor in the event of a dispute involving late or nonpayment by the Contractor, deficient Subcontractor performance or noncompliance by a Subcontractor.

Prime Contractor must submit the MTS Prompt Payment Certification Form to the MTS Contracts Administrator if any Subcontractors. The form is available for download at <https://www.sdmts.com/business-center/procurement>. The form certifies that all Subcontractors were paid within seven (7) business days of receiving payment from MTS for work performed during the previous month. The prime contractor must submit the completed certification, as required on the form, and the month following final acceptance of the project. In addition, seven (7) business day prompt payment requirement prevails over contract language between a Prime Contractor and a Subcontractor.

7.29. RECORDS RETENTION AND ACCESS TO SITES OF PERFORMANCE (APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

A. Types of Records. Contractor and any Subcontractor shall retain, complete and make readily accessible records related in whole or in part to the performance of the Contract, including, but not limited to, data, documents, reports, statistics, subagreements, leases, third party contracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

- B. Retention Period. The Contractor and any Subcontractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- C. Access to Records and Sites of Performance. Contractor and any Subcontractor shall:
- i. Provide sufficient access to inspect, copy and audit records and information, related to the performance of the Contract, upon receipt of a request made by the U.S. Secretary of Transportation or the Secretary's duly authorized representatives, to the Comptroller General of the United States, the Comptroller General's duly authorized representatives, State of California or its duly authorized representatives, the California State Auditor, and/or MTS;
 - ii. Permit those individuals listed above access to all records of employment, employment advertisements, employment application forms, and other pertinent data related to the performance of the Contract;
 - iii. Permit those individuals listed above to have access to the sites of performance of the Contract and to make site visits as needed in compliance with the U.S. DOT Common Rules, as applicable.
 - iv. Otherwise comply with 49 U.S.C. § 5325(g), and federal access to records requirements as set forth in the U.S. DOT Common Rules, as applicable.

7.30. [NOT APPLICABLE] WARRANTIES-GUARANTEES

Contractor warrants that the goods shall be new, free from liens and defects in design, materials, workmanship, and title, and shall conform in all respects to the terms of this Agreement and to the drawings issued for manufacture by Contractor, and shall be of the best quality, if no quality is specified. Unless the warranty period is otherwise extended, the warranty shall apply. If, within one year from the date of commercial operation for the purpose for which the goods were purchased, or 18 months from the date of final delivery, whichever comes first, it appears that the goods, or any part thereof, do not conform to these warranties, and MTS so notifies Contractor within a reasonable time after its discovery, Contractor shall thereupon promptly correct such nonconformity to the satisfaction of MTS, at Contractor's sole expense, failing which MTS may reject and cover by purchasing substitute goods or MTS may proceed to make corrections or accomplish Contractor's performance by the most expeditious means available, the costs of cover or correction shall be for Contractor's account.

7.31. [NOT APPLICABLE] INTELLECTUAL PROPERTY WARRANTY

MTS shall advise the Contractor of any impending patent suit related to this Contract against MTS and provide all information available. The Contractor shall defend any suit or proceeding brought against MTS based on a claim that any services or goods furnished under this Contract constitutes an infringement of any patent, and the Contractor shall pay all damages and costs awarded therein, excluding incidental and consequential damages against MTS. In case said services or good, or any part thereof, is in such suit held to constitute infringement and use of said services or goods is enjoined, the Contractor shall, at its own expense and at its option, either procure for

MTS the right to continue using said services or goods, or replace same with non-infringing services or goods, or modify it so it becomes non-infringing.

7.32. [NOT APPLICABLE] DATA RIGHTS

The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Agreement. It includes the proprietary rights of the following:

- Shop drawings and working drawings
- Technical data including manuals or instruction materials, computer or microprocessor software
- Patented materials, equipment, devices or processes
- License requirements

MTS shall protect proprietary information provided by the Contractor to the fullest extent of the law. The Contractor shall grant a non-exclusive license to allow MTS to utilize such information. In the event that the Contractor no longer provides the information, MTS has the right to reverse engineer patented parts and software.

MTS reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the following subject data for its purposes: (1) any subject data required to be developed and first produced in the performance of the Contract and specifically paid for as such under the Contract, whether or not a copyright has been obtained; and (2) any rights of copyright to which the Contractor, Subcontractor or Supplier purchases ownership for the purpose of performance of the Contract and specifically paid for as such under the Contract. The Contractor agrees to include the requirements of this clause, modified as necessary to identify the affected parties, in each subcontract and supply order placed under the Contract.

7.33. EXCLUSIVE USE

The services hereunder are provided for the exclusive use of MTS and such services, data, recommendations, proposals, reports, design criteria, and similar information provided by Contractor, are not to be used or relied upon by other parties except as authorized by MTS.

7.34. OWNERSHIP OF DOCUMENTS

Tracings, plans, specifications, and maps prepared or obtained under the terms of this Agreement shall be delivered to and become the property of MTS. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under this Agreement shall be made available, upon request, to MTS without restriction or limitation on its use.

7.35. LANGUAGE AND MEASURE UNITS

Unless specified otherwise, manuals, specifications, drawings, plans, purchase orders, subcontract documents, and invoices submitted in accordance with this Agreement shall be in metric ("Systems International d' Units," or "SI units") with the United States equivalents clearly shown.

7.36. [NOT APPLICABLE] STANDARDS AND CODES

Whenever references are made in the Agreement to standards or codes in accordance with which the goods are to be manufactured or tested, the edition or revision of the standards or codes current on the effective date of this Agreement shall apply, unless otherwise expressly set forth. Unless otherwise specified, reference to such standards or codes is solely for implementation of the technical portions of such standards and codes.

In case of conflict among any referenced standards and codes, or between any referenced standards and codes and the Technical Specifications, MTS will determine which will govern.

7.37. DISADVANTAGED BUSINESS ENTERPRISE (DBE) AND OTHER SMALL BUSINESS PARTICIPATION

This project is subject to 49 CFR Part 26 entitled "Participation by DBEs in DOT Financial Assistance Programs." MTS's DBE program has an aspirational goal of 5.6% participation by certified DBE's over FFY 2025 to 2027 (October 1, 2024 – September 30, 2027).

There is no specific DBE contract goal for this project.

In order to help MTS, achieve its federally mandated overall DBE goal, MTS encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed, in whole or in part, with federal funds. It is the policy of MTS to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in MTS DOT-assisted contracts. It is also our policy to:

1. Ensure nondiscrimination in the award and administration of all MTS contracts and subcontracts; Create a level playing field by which DBEs can compete for and perform in MTS DOT-assisted contracts;
2. Ensure that the MTS DBE Program is narrowly tailored in accordance with applicable law and current legal standards, including the Ninth Circuit Ruling in *Western States Paving vs. Washington State Department of Transportation*;
3. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
4. Help remove procurement and contracting barriers, which impede DBE participation in MTS DOT-assisted contracts;
5. Monitor and enforce contractors' compliance in meeting established goal objectives and program requirements;
6. Assist in the development of DBEs and Small Businesses to increase their ability to compete successfully in the market place outside the DBE Program;
7. Ensure MTS contractors and subcontractors take all necessary; and reasonable steps to comply with these policy objectives.

To ascertain whether its overall DBE goal is being achieved, MTS is tracking DBE participation on all federal-aid contracts. Therefore, all Proposers and successful Contractors are required to:

- Complete MTS's Designation of Subcontractors and DBE Program - Information for MTS's Bidder List.

MTS encourages the proposer to outreach to DBEs and other small business enterprises for any

potential subcontracting opportunities on this project. Contractor is also encouraged to use services offered by financial institutions owned and controlled by DBEs. If interested in learning about bonding or financial assistance that may be available for small businesses, visit www.sba.gov.

Contractor shall be fully informed in respect to the requirements of the DBE regulations. The DBE regulations in their entirety are incorporated herein by this reference (see 49 CFR 26). Contractor's attention is directed to the following matters:

1. A DBE may participate as a prime contractor, subcontractor, joint-venture partner with a prime or subcontractor, vendor of materials or supplies, manufacturer, regular dealer or trucking company. DBE participation will be counted toward MTS's overall DBE goal per the DOT Regulations stated in 49 CFR 26.55.
2. A DBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.
3. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources: To view the CUCP statewide DBE Directory, please use the following link: http://dot.ca.gov/hq/bep/find_certified.htm.
4. If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification.
5. The contractor must promptly notify MTS whenever a DBE subcontractor performing work related to this contract is terminated, substituted 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 MTS.

7.38. AMERICANS WITH DISABILITIES ACT

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; as well as all applicable regulations and guidelines issued pursuant to the ADA

7.39. SUBSTANCE ABUSE

Pursuant to the rules and regulations of the Department of Transportation to the extent applicable to this Contract, Contractor will be required to comply with all applicable drug and alcohol testing requirements, including the amendments to 49 C.F.R. parts 655.

As a condition of this Contract, the following are the Contractor's Drug and Alcohol Testing Obligations:

7.39.1. CONTRACTORS CERTIFICATION:

Contractor certifies that it will comply with all applicable drug and alcohol testing requirements provided by law, including, but not limited to, the drug and alcohol testing requirements set forth in the Department of Transportation's regulations.

7.39.2. INDEMNIFICATION OF MTS:

Contractor agrees to indemnify, defend and hold harmless MTS, SDTI and SDTC, and their directors, employees and agents from and against any loss, damage, expense and liability that MTS, SDTI or SDTC, may incur as a result of Contractor's failure to comply with any applicable drug and alcohol testing obligations.

7.39.3. SURVIVAL OF MTS' INDEMNIFICATION RIGHTS:

The rights and obligations contained in "B" (Indemnification of MTS) will survive any termination or expiration of this Agreement.

7.39.4. FAILURE TO COMPLY WITH DRUG AND ALCOHOL TESTING OBLIGATIONS MAY RESULT IN TERMINATION OF CONTRACT:

If, at any time during the period of this Agreement, Contractor fails to comply with any applicable drug and alcohol testing requirements, MTS will consider such failure a material breach of this Agreement, and MTS may terminate this Agreement immediately.

7.40. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

7.40.1. MTS'S EQUAL EMPLOYMENT OPPORTUNITY PROGRAM:

MTS is an Equal Opportunity Employer. As such, MTS agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, MTS agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. MTS' Equal Employment Opportunity Program for Contractors, MTS Policy No. 25, is part of this Agreement (a copy can be obtained from MTS' Clerk of the Board).

7.40.2. CONTRACTOR'S EQUAL EMPLOYMENT OPPORTUNITY PLAN:

Each Contractor who provides MTS labor, equipment, materials and services of \$50,000 or more per year with fifty (50) or more employees shall have, maintain, and submit an Equal Employment Opportunity Plan to the Director of Human Resources and Labor Relations for MTS each year of the contract, and a Workforce Utilization Report on or before January 1 and July 1 for each year of the contract. The objective of this plan is to assure that the Contractor will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, sexual orientation, gender identity, religion, disability, age or status as a parent. 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.

7.40.3. COMPLIANCE WITH REGULATIONS:

Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal

assistance programs; Comply with federal transit law, specifically 49 U.S.C. § 5332; FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients,"; and Follow any other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination.

7.41. [NOT APPLICABLE] PUBLIC WORKS

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to enter into a contract to perform public work must be registered with the Department of Industrial Relations. No contract will be entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a contract, the Bidder and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project.

LABOR

Hours of Work: Eight (8) hours of work shall constitute a legal day's work. Contractor and each subcontractor shall forfeit, as penalty to MTS, twenty-five dollars (\$25) for each worker employed in the execution of Work by the Contractor or any subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, section 1810 to section 1815, except as provided in Labor Code section 1815. The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of MTS and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

Prevailing Rates of Wages: The Contractor is aware of the requirements of Labor Code Sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov. In the alternative, the Contractor may view a copy of the prevailing rate of per diem wages which are on file at MTS's Administration Office and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold MTS, its Board, members of the Board, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

The Contractor shall forfeit as a penalty to MTS not more than Two Hundred Dollars (\$200.00), pursuant to Labor Code Section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the Department of

Industrial Relations for such work or craft in which such worker is employed for any public work done under the Contract by it or by any subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

Contractor shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

Payroll Records: Pursuant to Labor Code Section 1776, Contractor and all subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Work under this Contract. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury.

In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement.

If not subject to paragraph (a), the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.

In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars (\$100.00) to MTS for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.

Employment of Apprentices: Contractor's attention is directed to the provisions of sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Contractor or any subcontractor. Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to sections 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

Nondiscrimination: Pursuant to Labor Code Section 1735 and other applicable provisions of law, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. The Contractor will take affirmative action to ensure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical

condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.

Labor Certification I am aware of the provisions of section 3700 of the 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 code.

7.42. [NOT APPLICABLE] CALIFORNIA AIR RESOURCES BOARD ("CARB")

The California Air Resources Board ("CARB") implemented amendments to the In-Use Off-Road Diesel-Fueled Fleets Regulations ("Regulation") which are effective on January 1, 2024 and apply broadly to all self-propelled off road diesel vehicles 25 horsepower or greater and other forms of equipment used in California. A copy of the Regulation is available at <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/off-road-diesel/appa-1.pdf>. Bidders are required to comply with all CARB and Regulation requirements, including, without limitation, all applicable sections of the Regulation, as codified in Title 13 of the California Code of Regulations section 2449 et seq. throughout the term of the Project. Bidders must provide, with their Bid, copies of Bidder's and all listed subcontractors the most recent, valid Certificate of Reported Compliance ("CRC") issued by CARB. Failure to provide valid CRCs as required herein may render the Bid non-responsive. The contract award is subject to the approval of the MTS Board of Directors.

7.43. [NOT APPLICABLE] IDENTIFICATION OF PERSONNEL/SECURITY

MTS shall provide all Contractor personnel assigned to work under this Agreement with Contractor Identification Badges ("MTS ID Card"). Requests for MTS ID Cards will be made to and processed by the MTS-designated project manager or contracting officer. Approved requests for MTS ID Card(s) will be processed within two business days. All Contractor personnel must obtain MTS ID Cards prior to entering MTS property. Valid MTS ID Cards must be displayed prominently on the uniform of all of Contractor's employees while on MTS property. Contractors are required to provide their employees uniforms prominently bearing the name of the Contractor's business entity. MTS will allow only properly credentialed personnel of the Contractor who are wearing the appropriate uniform on its property. Contractor personnel who enter MTS property without valid MTS ID Cards may be arrested and/or cited by MTS Code Enforcement and/or other law enforcement for trespassing and violation of MTS Ordinance 13. Contractor must collect MTS ID Cards from all Contractor personnel separating from employment with the Contractor and return them to MTS for destruction. Contractor is strictly liable for the use of all MTS ID Cards issued to its employees under this Agreement.

Required Background Checks

MTS requires that all Contractor personnel assigned to work on MTS property pass comprehensive background checks (Investigative Consumer Report), conducted by the Contractor, prior to beginning work on MTS property or under this Agreement. At a minimum, the background check must, (1) positively establish the employee's identity, (2) search all common databases for criminal offenses (e.g., Federal District Court Databases), (3) verify the social security number or tax ID provided by the employee, (4) search sex offender databases, and (5) search the local criminal databases of every County in which the employee has lived in the last

seven years. Contractor must conduct background checks in accordance with applicable law, including but not limited to, the Fair Credit Reporting Act and California Civil Code Sections 1785 and 1786.

Contractor personnel meeting any of the conviction criteria outlined below **are not eligible** for issuance of an MTS ID Card and may not be assigned to work on MTS property:

Permanent Disqualification:

1. Registered sex offenders are ineligible.
2. Espionage or conspiracy to commit espionage.
3. Sedition or conspiracy to commit sedition.
4. Treason or conspiracy to commit treason.
5. A federal crime of terrorism as defined in 18 U.S.C. 2332b(g), or comparable State law, or conspiracy to commit such crime.
6. A crime involving a TSI (transportation security incident). Note: A transportation security incident is a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area, as defined in 46 U.S.C. 70101. The term "economic disruption" does not include a work stoppage or other employee-related action not related to terrorism and resulting from an employer-employee dispute.
7. Improper transportation of a hazardous material under 49 U.S.C. 5124 or a comparable state law.
8. Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device. An explosive or explosive device includes an explosive or explosive material as defined in 18 U.S.C. 232(5), 841(c) through 841(f), and 844(j); and a destructive device, as defined in 18 U.S.C. 921(a)(4) and 26 U.S.C. 5845(f).
9. Murder.
10. Threat or maliciously conveying false information knowing the same to be false, concerning the deliverance, placement, or detonation of an explosive or other lethal device in or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility.
11. Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, et seq., or a comparable State law, where one of the predicate acts found by a jury or admitted by the defendant, consists of one of the permanently disqualifying crimes.
12. Attempt to commit the crimes in items (2)-(5) of this section.
13. Conspiracy or attempt to commit the crimes in items (6)-(11) of this section.
14. Any offense that is still pending in the courts (without official legal disposition) that will disqualify the individual if they are convicted.

Disqualification for seven years from the date of the offense or five years from the date of release from prison for the offense (whichever is later):

1. Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transporting, delivery, import, export of, or dealing in a firearm or other weapon. A firearm or other weapon includes, but is not limited to, firearms as defined in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a), or items contained on the U.S. Munitions Import List at 27 CFR 447.21.
2. Extortion.

3. Dishonesty, fraud, or misrepresentation, including identity fraud and money laundering, where the money laundering is related to a crime listed in Parts A or B (except welfare fraud and passing bad checks).
4. Bribery.
5. Smuggling.
6. Immigration violations.
7. Distribution, possession w/ intent to distribute, or importation of a controlled substance.
8. Arson.
9. Kidnapping or hostage taking.
10. Rape or aggravated sexual abuse.
11. Assault with intent to kill.
12. Robbery.
13. Fraudulent entry into a seaport as described in 18 U.S.C. 1036, or a comparable State law.
14. Violations of the Racketeer Influenced and Corrupt Organizations Act under 18 U.S.C. 1961, et seq., or a comparable state law, other than any permanently disqualifying offenses.
15. Voluntary manslaughter.
16. Conspiracy or attempt to commit crimes in this section.
17. Any offense that is still pending in the courts (without official legal disposition) that will disqualify the individual if they are convicted.

The term conviction includes being found guilty, pleading guilty, pleading no contest, or being found guilty by reason of insanity.

This section sets forth minimum standards Contractors must uphold through their background checking process, when assigning employees to work on an MTS contract. These disqualifying criteria are minimum standards to promote public safety/security. Contractor may choose to exceed these standards and is otherwise unrestricted in its employment decisions. Contractor may choose to employ individuals who do not meet these standards, as long as they are not assigned to work under this Agreement or on MTS property. Questions regarding the application of MTS's background checking standards should be directed to the MTS Manager of Human Resources.

Upon request of MTS, Contractor will provide sufficient documentation for MTS to audit Contractor's compliance with MTS's background checking standards. MTS reserves the right to delay provision of MTS ID Cards until contractor documents completion of appropriate background checks on employee(s) for whom Contractor is requesting MTS ID Card(s). MTS's oversight of Contractor's background checking process is not intended to replace Contractor's judgement or ability to manage its workforce and operation. MTS's oversight, or lack thereof, shall not limit Contractor's liabilities and/or obligations as set forth in this Agreement.

MTS reserves the right to suspend or revoke the MTS ID Cards of Contractor's employees at its sole and absolute discretion.

If, with MTS's consent, Contractor subcontracts all or part of the services within this Agreement, Contractor will remain directly responsible and liable for ensuring subcontractor(s) adhere to MTS background checking and ID Card standards.

If MTS determines that Contractor has breached its obligations as defined in this section, MTS may immediately terminate this Agreement by providing written notice to Contractor. If this Agreement is terminated, Contractor will be paid its costs for work performed up to the time of termination.

7.44. [NOT APPLICABLE] ROADWAY WORKERS PROTECTION (RWP) TRAINING

Prior to entering the MTS railroad operating corridor, all workers of Contractor, sub-Contractors, and any other third-party contractor under Contractor's control working on MTS property shall have taken and passed a four (4) hour RWP training course as required by the Federal Railroad Administration (FRA) California Public Utilities Commission (CPUC). Training courses are valid for one year from date issued. Contractor should allow at least two weeks to schedule training prior to commencement of services on the right of way (ROW). Registration for the course can be found online at: <http://www.sdmts.com/Business/RAILSAFETYTRAINING.htm>. Any costs related to RWP training courses shall be at the sole expense of the Contractor.

7.45. [NOT APPLICABLE] FLAGGING

Any work within fifteen (15) feet of active rail, or as otherwise identified by MTS, shall require an MTS flagger. An MTS Flagger Request form must be submitted to FlagRequest@sdmts.com no later than 72 hours prior to the commencement of the work. The MTS Flagger Request shall include: the specific location, time(s) and date(s) for when an MTS flagger(s) will be necessary. The MTS Flagger will be provided at the expense of the party requesting the work. The requester will be responsible to contact SDTI Assignment Office at (619) 595-4956 no later than 24 hours prior to beginning of work for all cancellations and may be subject to SDTI labor reporting costs.

7.46. [NOT APPLICABLE] SIGNALING

Contractor shall be required identify railroad utilities prior to any prior to any excavation and/or digging within MTS's rail right-of-way. Contractor shall be responsible for coordinating with MTS personnel to ensure MTS personnel are present when marking out Trolley facilities/property. If Contractor does not have authorized personnel capable of identifying railroad utilities on the right of way (ROW), Contractor can contact Cable Pipe and Leak ("CPL"), at (619) 574-0171 to locate said utilities prior to excavation or digging. The utility mark-out will be provided at the expense of the Contractor.

7.47. COVENANT AGAINST CONTINGENT FEES

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that she or he has not agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, MTS shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the Agreement a price or consideration, or otherwise recover the full amount of such fee, percentage, brokerage fee, gift, or contingent fee.

7.48. CALIFORNIA POLITICAL REFORM ACT

Contractor acknowledges that the California Political Reform Act (“Act”), Government Code section 81000 et seq., provides that Contractors hired by a public agency, such as MTS, may be deemed to be a “public official” subject to the Act if the Contractor advises MTS on decisions or actions to be taken by MTS. The Act requires such public officials to disqualify themselves from participating in any way in such decisions if they have any one of several specified “conflicts of interest” relating to the decision. To the extent the Act applies to Contractor, Contractor shall abide by the Act and the conflict of interest restrictions imposed on public officials by Government Code section 1090 et seq.

7.49. [NOT APPLICABLE] WATER QUALITY MANAGEMENT AND COMPLIANCE

- A. Contractor must recover and legally dispose of all wastewater created while providing services. Contractor assumes any and all risks and liabilities arising from the failure to properly recover and legally dispose of wastewater. Contractor must implement best management practices set forth in any stormwater pollution prevention plan relevant to the provision of the services.
- B. Compliance with Water Quality Laws, Ordinances and Regulations. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the services including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.); and any and all regulations, policies, or permits issued pursuant to any such authority. Contractor shall additionally comply with the lawful requirements of the San Diego Regional Water Quality Control Board, any municipality, drainage district, or other local agency with jurisdiction over the location where the services are to be conducted, regulating water quality and storm water discharges and shall implement best management practices, consistent with the requirements of any board, municipality, drainage district or other local agency appropriate for the control of discharges related to the services.
- C. Standard of Care. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in this section. Contractor further warrants that it, its employees and subcontractors have or will receive adequate training, as determined by MTS, regarding these requirements as they may relate to the services.
- D. Liability for Non-compliance.

- 1. Indemnity:

Failure to comply with laws, regulations, and ordinances listed in this section may constitute a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Contractor agrees to indemnify, defend and hold harmless MTS, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which MTS, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the services, except

for liability resulting from the sole established negligence, willful misconduct or active negligence of MTS, its officials, officers, agents, employees or authorized volunteers. Contractor is solely liable for any administrative or civil enforcement action arising from Contractor's failure to comply with the laws, regulations, and ordinances listed in this section and must pay any monetary penalty, fine, or damages associated with such action.

2. Defense

MTS reserves the right to defend any enforcement action or civil action brought against MTS for Contractor's failure to comply with any applicable water quality law, regulation, or policy. Contractor hereby agrees to be bound by, and to reimburse MTS for the costs associated with, any settlement reached between MTS and the relevant enforcement entity.

3. Damages

MTS may seek damages from Contractor for delay in completing the services caused by Contractor's failure to comply with the laws, regulations and policies described in this section, or any other relevant water quality law, regulation, or policy.

7.50. CONFLICT OF INTEREST LAWS FOR MTS CONSULTANT

A. Background & Applicability to Consultants

These procedures are intended to assist MTS consultants with complying with conflict of interest language in their contract with MTS. Pursuant to state regulations enforced by the California Fair Political Practices Commission (FPPC), the MTS Standard Agreement/Standard Conditions requires consultant employees to file a disclosure of financial interests known as a Form 700 if required by the MTS Conflict of Interest Code. The relevant Standard Agreement/Standard Conditions language. Additional information on Form 700s can be found on the [FPPC website](#).

B. Definitions and Persons Covered by the MTS Conflict of Interest Code

MTS has adopted a Conflict of Interest Code for its officers, employees and consultants pursuant to Government Code § 87300 et seq. According to the law, an agency's Conflict of Interest Code must list those employees, officers or consultants who are required to file a Form 700. The persons identified in the Conflict of Interest Code are designated as "Conflict Code Filers" because they "participate in the making of governmental decisions" that foreseeably could have a material financial effect on any of their economic interests. (2 Cal. Code of Regulations Section 18730.) MTS's Conflict of Interest Code can be found on the [MTS website](#). In general, a Form 700 discloses the types of interests in real property, investments, business positions, and sources of income and gifts that could potentially affect the Conflict Code Filer. The Form 700 serves as a reminder to the Conflict Code Filer and the public of the financial interest decision-makers need to consider as they could cause an actual, potential or perceived conflict of interest.

"Participating in making a governmental decision" includes negotiating, providing advice by way of research, investigation, or preparation of reports or analyses for the MTS decision-maker, if these functions are performed without significant intervening review.

MTS consultants who, pursuant to a contract with MTS, perform the same functions that would otherwise be performed by MTS employees by carrying out functions such as project management and oversight decisions (including recommendations that are likely to be approved by a MTS employee without significant intervening review); preparing contract scopes of work, specifications, cost estimates or contract negotiations; crafting evaluation factors to be used in a procurement, or deciding whether the policies, standards, or guidelines for MTS have been met, are considered to have “project manager responsibilities” that would otherwise be carried out by a MTS employee and are therefore required to fill out and submit a Form 700.

A consultant’s employee participates in making a governmental decision for MTS when, s/he negotiates without significant and substantive intervening review, with a third party (someone other than their employer or MTS) regarding a governmental or contract decision; or advises or makes recommendations to the MTS decision maker either directly or without significant and substantive intervening review. “Significant and substantive intervening review” means a review of someone else’s work during which the reviewer independently verifies the information, recommendation, advice, etc. that constitutes project manager responsibilities that lead to a governmental decision.

Form 700s are public records.

C. Steps for Compliance

Step 1: Identify who on your team will need to fill out a Form 700

The prime consultant will need to identify its own employees and the employees of its subconsultants (the consultant team) who have project manager responsibilities. Keep in mind, however, that even if a person has project manager responsibilities, if someone above that person in the decision-making process, whether a MTS employee or another consultant employee, is a Conflict Code Filer and that person conducts significant and substantive intervening reviews of the decision, recommendation or work in question, then not everyone prior to the Conflict Code Filer in the decision process needs to fill out a Form 700. If a consultant believes a member of its team with project management responsibilities for MTS is going to have his/her work undergo a significant and substantive intervening review by an MTS employee, the consultant must first check with the MTS Clerk of the Board ClerkoftheBoard@sdmts.com to confirm that MTS agrees with this allocation of responsibility.

Step 2: Notify MTS of Consultant’s Conflict Code Filers

It is up to the consultant to notify MTS of the names of the individuals on its team (whether prime or subconsultant) who should be Conflict Code Filers based on the parameters provided by MTS above in Section B. Designated persons must file statements of economic interests with MTS when assuming or leaving their position and annually while holding the position. It is important that the consultant maintains a list of its Conflict Code Filers and notify the MTS Clerk of the Board as soon as possible when the Consultant’s employees who are performing project management responsibilities for MTS change. Filers must submit their assuming and leaving office form within 30 days and an annual form before April 1st of each year. Consultant employees who have been designated as Conflict Code Filers may not work on MTS projects if they do not have an updated Form 700 on file with MTS.

New Filers/Assuming Office

The consultant will need to notify MTS of its new Conflict Code Filers to the MTS Clerk of the Board by email at ClerkoftheBoard@sdmts.com. As a reminder, the consultant will need to update the filer list of employees throughout the life of the contract as new individuals are identified as Conflict Code Filers for MTS, use the designated *consultant form 700 filer contact information* form to submit the information for each applicable employee.

B. For Existing Filers:

It is important that the consultant notify MTS when those individuals previously identified as Conflict Code Filers are no longer performing project management responsibilities for MTS. Once an individual is identified as a Conflict Code Filer and completes a Form 700 in the eDisclosure system, they are required by law to continue to complete a Form 700 each year or be subject to fines and penalties by the FPPC. In order to remove a Conflict Code Filer, the consultant must notify MTS of the date the individual stopped performing project management responsibilities for MTS so the individual can complete a Leaving Office Statement. Until a Leaving Office Statement is filed, the individual is still considered a Conflict Code Filer and must continue to file annual statements.

Step 3: Notification by MTS & Establishment of Account with eDisclosure System

Once MTS receives notification by a consultant of a new Conflict Code Filer, the Clerk of the Board will send an email to the individual notifying them of their obligation to complete a Form 700 and what to expect. The Clerk will create an account with the eDisclosure system and the individual will receive instructions about how to complete registration from email MTSClerkoftheBoard@southtechhosting.com (please whitelist this email). Once the account is established, the individual can complete and file their Form 700.

Step 4: Instructions for Completing the Form 700

General instructions for completing a Form 700 can be found on the FPPC website, and clicking on the Form 700 itself. When filling out the Form 700, the financial interests that consultant employees need to report are only those which are listed in disclosure category 1 and 2 of the MTS Conflict of Interest Code.

Questions regarding how to fill out the forms can be answered by calling the FPPC's toll free advice hotline 1-866-ASK-FPPC (1-866-275-3772*1), Monday-Thursday, 9-11:30 a.m.

A. Assuming Office Statement

The first time a consultant employee is asked to complete a Form 700, s/he will complete an Assuming Office Statement. The assuming office statement must be completed no later than 30 days after the date the employee first started performing project management responsibilities for MTS. The reporting period will be the 12 months prior to the date the office was assumed. For example, if a consultant assumed office on 5/1/2019, they will complete the statement disclosing information for the period 5/1/2018-4/30/2019.

B. Annual Statement

Once an individual completes an assuming office statement, they are required to complete an annual statement no later than April 1 of each year. Individuals that do not complete a

Form 700 by the deadline may be subject to a fine up to \$5,000 by the FPPC. Typically, reminder notices are sent by email from MTS and the eDisclosure system in January each year.

C. Leaving Office Statement

Once an individual is no longer performing project management responsibilities for MTS, they must complete a Leaving Office Statement within 30 days. To do this, the consultant or individual needs to notify the MTS Clerk of the Board that the individual is no longer performing project management responsibilities for MTS and therefore should no longer be a Conflict Code Filer. The date the employee stopped performing project management responsibilities for MTS will become the leaving office date. When completing a leaving office statement, the individual will disclose its interest for the calendar period leading up to the leaving office date. For example, if an individual leaves office on 5/15/2019, they will complete the statement disclosing information for the period 1/1/2019-5/15/2019. An active email will be provided to the Clerk in order to assure proper filer access.

Step 5: Review of Form 700s

Consultant employees are strongly cautioned not to simply mark the box indicating they have no disclosures to report on the form. Consultant employees always have their own employment income to report and many times have spousal income to report as well. The FPPC has prosecuted and fined persons who have failed to disclose income and gifts.

Form 700s should be used by the consultant to ensure its employees do not have prohibited conflicts. MTS also will use the forms to check whether the assignments given to consultant employees conflict with reported financial interests. If a conflict is found, the individual will not be permitted to work on the project in a project manager role.

Consultants will need to provide training to their employees who are identified as Conflict Code Filers on how to avoid prohibited conflicts of interest. Information regarding prohibited conflicts can be found [here](#) in Sections I, II, III, VII and XIII of the California Attorney General's handbook entitled Conflicts of Interest.

FORMS

The following forms/information are required to be submitted with your proposal as a matter of responsiveness. All proposals (and accompanying information) must be received by MTS' Procurement Department prior to the scheduled time and date as specified in the Calendar of Events.

Submit the proposal following instructions as specified in Submission Requirements section.

1. Contact Information Form
2. Cost/Pricing Forms
3. Designation of Subcontractors
4. MTS DBE PROGRAM – Information for Bidder List and Commercial Useful Function
5. Certification Regarding Debarment, Suspension and Other Ineligible and Voluntary Exclusions Lower-Tier Covered Transactions Contractor and Subcontractor's Statement of Eligibility Form and Questionnaire
6. Equal Opportunity Program Workforce Report
7. Equal Opportunity Program Workforce Report Continued
8. Status of Current and Past Contracts Form
9. Financial Questionnaire Form
10. California Public Records Act Acknowledgement Form
11. Non-collusion Declaration Form
12. Iran Contracting Act Certification Form
13. Vendor Security Questionnaire
14. Safety Department Standard Operating Procedures and Form
15. Bill of Materials
16. Request for Pre-Offer Changes or Approved Equal Form
17. Public Works Contractor Registration Certification Form
18. MTS Consultant Form 700 Filler Contact Information
19. Proposed Carrier Form
20. Buy America Form
21. Certification of Restrictions on Lobbying Form
22. Campaign Contribution Disclosure Form and Information Sheet
23. Transit Vehicle Manufacturer's (TVM) DBE Approval Certification Form

As part of the submittal, Proposer to include copies of Prime and all subcontractors:

1. License copies or printouts from <https://www.cslb.ca.gov/>
2. Public Works & Prevailing Wage Contractor Registration from <https://cadir.my.salesforce-sites.com/ContractorSearch>.

CONTACT INFORMATION

Read attached General Provisions carefully. They are a part of your proposal. Unit prices will prevail regardless of extensions submitted by the Proposer.

Company Information:

The Official, Legal Name of Proposing Firm:

Doing Business As:

Legal Structure (Corp./Partner/Proprietor):

Company Mailing Address:

Street

City State Zip

Person Authorized to sign:

Point of Contact:

Title:

E-Mail Address:

Phone Number:

Accounts Receivable

Point of Contact:

Title:

E-Mail Address:

Phone Number:

Labor Compliance

Point of Contact:

Title:

E-Mail Address:

Phone Number:

RETURN THIS FORM WITH YOUR PROPOSAL

Proposer to describe technical services readily available from said representative:

Location of Nearest Technical Service
Representative to MTS:

Name: _____

Telephone: _____

Company Mailing Address: _____

_____ Street

_____ City _____ State _____ Zip

SAMPLE

COST/PRICING FORM

Refer to Attachment: ATT 1 Cost Pricing Form

Read attached General Provisions carefully. They are a part of your proposal.

Proposer shall submit pricing for all the work described in the Scope of Work section. In preparing a cost proposal, Proposers are requested to provide a total all-inclusive cost for each line/year of service.

Estimated quantities are for proposal purposes only. The quantities do not reflect guaranteed usage by MTS and may be more or less than indicated.

Unit prices will prevail regardless of extensions submitted by the Proposer.

All proposers must complete proposal forms as provided, failure to do so will deem the proposal non-responsive.

Proposer accepts responsibility for accuracy and presentation of the numbers included in the cost/price form.

Submit the proposal following instructions as specified in Submission Requirements section.

SAMPLE

DESIGNATION OF SUBCONTRACTORS

List Subcontractor participants below. If 100% of item is not to be performed or furnished by subcontractor, describe exact portion of item to be performed or furnished by subcontractor. The successful bidder must execute and return this form even if no subcontractor participation will be reported.

Subcontractor 1

Company Name:

Contractor License or Certificate Number

DBE, PDBE, DVBE, LGBTBE, MBE, SB,
WBE:

% of Work:

Department of Industrial Relations (DIR)
Number:

Point of Contact

Email:

Phone Number:

Address:

Street

City

State

Zip

Description of Work:

RETURN THIS FORM WITH YOUR PROPOSAL

COPY THIS FORM IF NEEDED FOR ADDITIONAL SUBCONTRACTORS.

Subcontractor

Company Name: _____
Contractor License or Certificate Number _____
DBE, PDBE, DVBE, LGBTBE, MBE, SB, WBE: _____
% of Work: _____
Department of Industrial Relations (DIR) Number: _____
Point of Contact _____
Email: _____
Phone Number: _____
Address: _____
Street _____
City State Zip _____

Description of Work:

MTS DBE PROGRAM - INFORMATION FOR BIDDER LIST AND COMMERCIAL USEFUL FUNCTION

MTS is required by Disadvantaged Business Enterprise (DBE) Regulations at 49 CFR Part 26 to collect and report data about DBE and non-DBE contractors and subcontractors who seek to work on MTS's projects. MTS may also use this data to set MTS's overall DBE goals and to assist in monitoring commercial useful function in order to count DBE participation toward meeting MTS's overall DBE goals.

INSTRUCTIONS: Each prime contractor and each subcontractor bidding/submitting a proposal is **required** to complete this form as part of their bid or proposal. If multiple subcontractors, copy this form.

1. Firm Name:	
2. Firm's Full Address (street, city, state, and zip code):	
3. NAICS code for work seeking to perform:	
4. If applicable, please check any certification that your firm currently maintains:	<input type="checkbox"/> DBE <input type="checkbox"/> SB – Small Business <input type="checkbox"/> DVBE – Disabled Veteran Owned Business <input type="checkbox"/> LGBTBE – LGBT Owned Business <input type="checkbox"/> MBE – Minority Owned Business <input type="checkbox"/> PDDBE – Persons with Disability Owned Business <input type="checkbox"/> WBE – Woman Owned Business
5. Only if DBE certified firm, please check one (1) type of work your firm is seeking to perform on this bid/proposal (as defined at enclosed MTS DBE Program: Commercial Useful Function – Guidance for DBE Contractors):	<input type="checkbox"/> Construction/Maintenance Services <input type="checkbox"/> Professional Services <input type="checkbox"/> Other Services – e.g. broker <input type="checkbox"/> Manufacturer of Materials/Supplies <input type="checkbox"/> Regular Dealer of Materials/Supplies <input type="checkbox"/> Distributer of Materials/Supplies <input type="checkbox"/> Other (not listed above) Material Supplier <input type="checkbox"/> Trucking
6. Race of majority owner of firm:	
7. Gender of majority owner of firm:	
8. Year firm was established:	
9. Please check your firm's applicable annual gross receipt range:	<input type="checkbox"/> Less than \$1,000,000 <input type="checkbox"/> \$1,000,001 - \$15,000,000 <input type="checkbox"/> \$15,000,001 - \$30,720,000 <input type="checkbox"/> \$30,720,001 - \$50,000,000 <input type="checkbox"/> Greater than \$50,000,000

SIGNATURE ACKNOWLEDGES AND AFFIRMS ACCURACY OF COMPLETED FORM

SUBCONTRACTOR

PRIME CONTRACTOR

Signature: _____

Signature: _____

Date: _____

Date: _____

MTS DBE PROGRAM

Commercial Useful Function (CUF) – Guidance for DBE Contractors

Per FTA DBE Regulations at 49 CFR Part 26, to meet Commercial Useful Function requirements in order for MTS to count the participation of a DBE prime or DBE subcontractor towards its DBE Overall Goal, the **DBE prime or DBE subcontractor must:**

- 1) Be responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved;
- 2) Not be an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation;
- 3) Perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force; and
- 4) Depending on the type of work being performed, meet the definitions of the Table below.

Type of Work Performed	Definitions	Counting Rules of DBE Prime or DBE Subcontract Dollar Value
1a. <u>Construction/Maintenance Services</u> – Supplies purchased or leased equipment from a third-party	Responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (if applicable) and paying for the material itself	Count 100%
1b. <u>Construction/Maintenance Services</u> – Supplies purchased or leased equipment from a prime contractor		Count only labor costs (exclude cost of material, supplies, equipment purchased/leased from prime or its affiliates)
2a. <u>Professional Services</u> – Bona Fide Services	E.g. professional, technical, architectural and engineering, managerial, providing bonds, or insurance	Count 100%
2b. <u>Services</u> – Other	E.g. brokers, packagers, manufacturer's reps., (arrange or expedite the procurement of goods and services)	Count fees or commissions related to assistance only (exclude cost of service itself)

RETURN THIS FORM WITH YOUR PROPOSAL

Type of Work Performed	Definitions	Counting Rules of DBE Prime or DBE Subcontract Dollar Value
3a. <u>Materials and Supplies</u> – Manufacturer	Owns (or leases) and operates a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. Not a manufacturer if only does minor modifications to materials.	Count 100%
3b. <u>Materials and Supplies</u> – Regular Dealer	<p>Owns (or leases) and operates, a store, warehouse or other establishment in which materials, supplies, articles or equipment of the “general character” required under the contract are bought, kept in sufficient quantities, and regularly sold or leased to the public in the usual course of business. Items kept and regularly sold by the DBE are of the “general character” when they share the same material characteristics and application as the items specified by the contract.</p> <p>Engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. At least 51% of the items on the contract are provided from its inventory, and when necessary, any minor quantities delivered from and by other sources are of the “general character” as those provided from the DBE’s inventory.</p> <p>Both owns and operates distribution equipment used to deliver the products for bulk items (e.g. as petroleum products, steel, concrete or concrete products, gravel, stone, or asphalt) without owning, operating, or maintaining a place of business. Any supplementing of own distribution equipment must be by a long-term operating lease.</p> <p>Includes a supplier of items that are not typically stocked due to their unique characteristics (e.g. limited shelf life or items ordered to specification)</p>	Count 60% of cost of materials or supplies (including transportation costs)
3c. <u>Materials and Supplies</u> – Distributor	Neither maintains sufficient inventory nor uses its own distribution equipment for the products in question. Engages in the regular sale or lease of items specified by the contract. Assumes responsibility for the items it purchases once they leave the point of origin (e.g. a manufacturer’s facility) making it liable for any loss or damage not covered by the carrier’s insurance	Count 40% of the cost of materials or supplies (including transportation costs)
3d. <u>Materials and Supplies</u> – Other	Packagers, brokers, manufacturers’ representatives, or other persons who arrange or expedite transactions	Count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation

RETURN THIS FORM WITH YOUR PROPOSAL

Type of Work Performed	Definitions	Counting Rules of DBE Prime or DBE Subcontract Dollar Value
		charges for the delivery of materials or supplies required on a job site (exclude cost of the materials and supplies themselves)
4a. <u>Trucking</u> = Owned and Operated	Responsible for management and supervision of entire trucking operation on the contract. Owns and operate at least 1 fully licensed, insured, and operational truck used on the contract, using drivers it employs.	Count credit for the total value of the transportation services provided on the contract.
4b. <u>Trucking</u> = Leased Trucks from another DBE firm	Owned and operates leased trucks from another DBE firm, including an owner-operator who is a DBE. Lease must indicate that the DBE has exclusive use of and control over the truck. Does not preclude the leased truck from working for others during the lease with the consent of the DBE, so long as lease gives the DBE absolute priority	Count credit for the total value of the transportation services the lessee provided on the contract.

SAMPLE

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBLE AND VOLUNTARY EXCLUSIONS LOWER THAN TIER COVERED TRANSACTIONS

CONTRACTOR AND SUBCONTRACTOR'S STATEMENT OF ELIGIBILITY

(Provide one completed Form for the Prime Contractor and any Subcontractors)

MTS may not permit a contractor or subcontractor to bid on, be awarded, or perform work on a public works project if the contractor or subcontractor is ineligible to bid on, be awarded or perform work on a public works project pursuant to California Labor Code sections 1777.1 or 1777.7.

In addition, MTS may not award any federally funded contract over \$25,000 to a contractor or subcontractor that is excluded or disqualified pursuant to 2 CFR Part 180 Subpart C.

The prime/subcontractor certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification.

QUESTIONNAIRE

Has the Contractor, or any officer, principal, affiliates or employee of the Contractor ever been debarred, suspended, proposed for debarment, declared ineligible or otherwise prevented from bidding on, or completing a federal, state, or local government project? Yes No

If the answer is yes, or where the prime/subcontractor is unable to certify any of the statements in the above certifications, such prime/subcontractor shall attach an explanation (i.e. date, background, resolution) with this form.

Note: Failure to provide this form at the time of Bid/Proposal will not result in a finding of a non-responsive bid/proposal. Submittal of this form for The Prime Contractor and all Subcontractors is required for a Proposer to be deemed "Responsible." MTS encourages Proposers to complete and submit all forms at the time of bid/proposal.

SUBCONTRACTOR

(Copy this form if needed for additional subcontractors)

Business Name: _____
License No. (if applicable): _____
DUNS No.: _____

PRIME CONTRACTOR

Business Name: _____
License No. (if applicable): _____
DUNS No.: _____

ACKNOWLEDGED AND AGREED

Print Name: _____
Title: _____
Signature: _____
Date: _____

Print Name: _____
Title: _____
Signature: _____
Date: _____

EQUAL OPPORTUNITY PROGRAM WORKFORCE REPORT

Metropolitan Transit System (MTS) enforces an Equal Opportunity (EEO) program established under MTS policies and procedures No. 25. This program prohibits discrimination in employment and requires MTS Contractors to be equal opportunity employers. You may submit a copy of the Employer Information Report, EEO-1, in lieu of the **Equal Opportunity Program Workforce Report Continued Form**. The undersigned hereby certifies that the foregoing data contained herein is true and correct:

COMPLETE ALL SECTIONS OF THIS FORM:

1. The Official, Legal Name of Proposing Firm: _____
2. Doing Business As: _____
3. Legal Structure (Corp./Partner/Proprietor): _____
4. Address of Establishment in San Diego County: _____
Street

City State Zip
5. If there is no office in San Diego County, or if there are less than 15 employees in that office, include an address for your regional office that will oversee the work under MTS' contract: _____
Street

City State Zip

Employment Data - Include the employees located in San Diego County only, unless your firm employs fewer than fifteen (15) people locally. In the event, you should list the workforce of the regional office that will oversee the work under MTS' contract. Report all permanent full-time and part-time employees including apprentices and on-the-job trainees. Blank spaces will be considered as zeros

ACKNOWLEDGED AND AGREED

6. Name, Address, and Phone Number of Person to Contact Regarding this Report:

Name of Signee: _____
Title: _____
Phone Number: _____
Address: _____
Street

City State Zip

Name of Signee: _____
Authorized Signature: _____
Date: _____

EQUAL OPPORTUNITY PROGRAM WORKFORCE REPORT CONTINUED

OCCUPATIONAL CATEGORY	African American		Hispanic		Asian or Pacific Islander		Native American		Other		Overall Total	
	M	F	M	F	M	F	M	F	M	F	M	F
Executive/Managerial												
Engineers/Architects/Surveyors												
Professionals (N.E.C.)												
Technicians												
Sales												
Administrative Support												
Protective Services												
Services (N.E.C.)												
Craft Workers (Skilled)												
Machine Operators, Assemblers & Inspectors												
Transportation and Material Moving												
Laborers (Unskilled)												
TOTALS FOR EACH COLUMN												

Indicate by gender and ethnic code the number of the above workforce, which are persons with disabilities:

DISABLED												
----------	--	--	--	--	--	--	--	--	--	--	--	--

ETHNIC IDENTIFICATION

African American: (NOT OF HISPANIC ORIGIN): All persons having origins in any of the black racial groups of Africa.

Hispanic: All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

Asian or Pacific Islander: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area, includes, China, Japan, Korea, the Philippine Islands, and Samoa.

Native American: All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition

Other: Caucasian and others not falling into one of the designated categories.

DISABLED DEFINITION

Any person who 1) has a physical or mental condition which limits one or more of such person's major life activities, 2) has a history of such a condition, or 3) is regarded as having such a condition. For purposes of this definition, "major life activity" means any mental or physical function or activity, which if impaired, creates a substantial barrier to employment.

OCCUPATIONAL CATEGORY LIST

Executive/Managerial

Executive, Management Related

Engineers/Architects/Surveyors

Professionals (N.E.C.)*

Mathematical and Computer Scientists

Natural Scientists

Health Diagnosing

Health Assessment and Treating

Teachers, Postsecondary

Teachers, except Postsecondary

Counselors, Educational and Vocational

Librarians, Archivists, Curators

Social Scientists and Urban Planners

Social, Recreation and Religious Workers

Lawyers and Judges

Writers, Artists Entertainers & Athletes

Technicians

Health Technologists and Technicians

Engineering and Related Technologists and Technicians

Science Technicians

Technicians, Except Health, Engineering, and Service

Sales

Supervisors and Proprietors

Sales Representatives, Finance, and Business

Services

Sales Representatives, Commodities except Retail

Sales Workers, Retail, and Personal Services

Other Sales Related

Administrative Support

Supervisors of Administrative Support

Computer Equipment Operators

Secretaries, Stenographers, Typists

Information Clerks

Records Processing, Except Financial

Financial Records Processing

Duplicating and Other Office Machine Operators

Communications Equipment Operators

Mail and Message Distributing

Material Recording and Distributing Clerks

Adjusters and Investigators

Other Office/Clerical

*N.E.C.: Not Elsewhere Classified

Protective Services

Supervisors of Protective Services

Firefighting and Fire Prevention

Police and Detectives

Guards & Other Protective Services

Services (N.E.C.)*

Private Households

Food Preparation and Services

Health Services

Cleaning and Building Services

Personal Services

Craft Workers (Skilled)

Supervisors of Mechanics and Repairers

Vehicle and Mobile Equipment Mechanics and Repairers

Heating, Air Conditioning, Refrigeration, Mechanics

Other Mechanics and Repairers

Supervisors of Construction Trades

Construction Trades, Except Supervisors

Extractive Occupations

Precision Production Occupations

Machine Operators, Assemblers & Inspectors

Metalworking and Plastic Working Machine Operator

Metal and Plastic Processing Machine Operators

Woodworking Machine Operators

Printing Machine operators

Textile, Apparel, and furnishing Machine Operators

Machine Operators, Assorted Materials

Fabricators, Assembler and Hand Working Occupations

Production Inspector, Tester, Sampler, Weigher

Transportation and Material Moving

Motor Vehicle Operators

Rail Transportation Occupations

Water Transportation Occupations

Material Moving Equipment Operators

Laborers (Unskilled)

Handlers

Equipment Cleaners

Helpers & Laborers

STATUS OF CURRENT AND PAST CONTRACTS

Proposers shall list the status of **at least three (3)** current and past contracts where the subject scope of work has been performed within the past five years.

Proposer shall provide an accurate contact name, telephone number, and email for each contract, the terms and scope of the contract, the original contract value and if the contract has been completed or is still in progress. The Proposer must also indicate if the contract was terminated by either the procuring agency or by the Contractor for cause or convenience. If the contract was terminated, list the reason for termination. Identify and state the status of any litigation, claims, or settlement agreements related to any of the contracts.

REFERENCE NO.1

Company Name: _____

Point of Contact: _____

Phone: _____

Email: _____

Project Award Date: _____

Original Contract Value: _____

Status of Contract: _____

A. Terms and Scope of Contract

B. Identify Claims / Litigation or Settlements Associated with each Contract:

REFERENCE NO.2

Company Name:

Point of Contact:

Phone:

Email:

Project Award Date:

Original Contract Value:

Status of Contract:

A. Terms and Scope of Contract

B. Identify Claims / Litigation or Settlements Associated with each Contract:

REFERENCE NO.3

Company Name:

Point of Contact:

Phone:

Email:

Project Award Date:

Original Contract Value:

Status of Contract:

A. Terms and Scope of Contract

B. Identify Claims / Litigation or Settlements Associated with each Contract:

FINANCIAL QUESTIONNAIRE FORM

1. This organization is organized under the laws of the State of: _____

2. Principal Financial institution. The information bellow will be used to assess financial responsibility.

Name of Bank: _____

Address: _____

Street

City, State, Zip

Telephone: _____

Officer Familiar with Proposer's Account: _____

3. Business License

NOTE: The representations regarding the Proposer's license are made under penalty of perjury.

Proposer's Business License No.: _____

Original Date Issued: _____

Expiration Date: _____

Proposer's DUNS No.: _____

Expiration Date: _____

Proposer's System for Award Management (SAM) No.: _____

Expiration Date: _____

4. The date of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this proposal are as follows:

5. All current and prior DBAs, alias, and/or fictitious business names for any principal having an interest in this proposal are as follows:

6. Has Proposer ever failed to complete any work awarded to it? If so, when, where, and why?

7. Identify any conditions bankruptcy, pending litigation, planned office closures, impending merger:

8. Provide a general description of the individual or firm's financial condition:

CALIFORNIA PUBLIC RECORD ACT (PRA) ACKNOWLEDGEMENT

I/We hereby represent, acknowledge, and agree as follows:

1. MTS is a California public agency established by California Public Utilities Code, Section 120000. et. seq., and is subject to the California PRA (Government Code sec. 6250 et seq.) which provides generally that all records relating to a public agency's business are open to public inspection unless exempted from disclosure by law.
2. The bid I/we have submitted to MTS is open to public inspection under PRA unless it is exempted from disclosure by law.
3. To the extent the bid includes materials that I/we believe are exempt from disclosure under PRA, **I/we understand that I/we must provide a letter identifying the materials that I/we believe are exempt from disclosure and explaining the basis for exemption.**
4. Any materials not identified as exempt from disclosure are open to public inspection, and I/we waive any right to subsequently claim exemption from disclosure for such materials.
5. MTS at all times retains the right to make the final determination regarding what, if any, portion of a bid is subject to disclosure under PRA.
6. Use of headers/footers bearing designations such as "confidential", "proprietary", or "trade secret" on all or nearly all of a bid which would prohibit or limit public inspection is not acceptable and may deem the bid non-responsive and may be rejected; labeling a page as such does not prohibit MTS from disclosing the page in response to a PRA response or in the ordinary course of business if MTS concludes it is obligated to so by applicable law.
7. To defend and indemnify MTS in any action on a PRA request for any of the contents of a Bid marked Trade Secret, Confidential or Proprietary.
8. Marking a document as "trade secret", "confidential" or "proprietary" without the express written permission of MTS does not exempt a document from disclosure to third parties under state or federal law, or in the normal course of MTS's business operations. MTS has no obligation to get a respondent's permission before producing such documents.
9. The bid I/we have submitted (*check one of the following*) materials that we believe are exempt from disclosure under PRA.

INCLUDES	<input type="checkbox"/>
DOES NOT INCLUDE	<input type="checkbox"/>

ACKNOWLEDGED AND AGREED

Company Name: _____

Title: _____

Signature: _____

Date: _____

NONCOLLUSION DECLARATION

TO BE EXECUTED BY PROPOSER AND SUBMITTED WITH OFFER

(23 U.S.C. § 112(c) and California Public Contract Code § 7106)

The undersigned declares:

I am the _____ of _____, the party making the foregoing offer.

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

Any person executing this declaration on behalf of the proposer 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 proposer.

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 _____(date), at _____(city), _____(state).

ACKNOWLEDGED AND AGREED

Name of Contractor: _____

Signature: _____

Date: _____

IRAN CONTRACTING ACT CERTIFICATION

(Public Contract Code Section 2200 et seq.)

As required by California Public Contract Code Section 2204, the Contractor certifies subject to penalty for perjury that the option checked below relating to the Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 et seq.) is true and correct:

1. The Contractor is not:
 - a. identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
 - b. a financial institution that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.
2. MTS has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, MTS will be unable to obtain the goods and/or services to be provided pursuant to the Contract.
3. The amount of the Contract payable to the Contractor for the Project does not exceed \$1,000,000.

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of \$250,000 or twice the Contract amount, termination of the Contract and/or ineligibility to bid on contracts for three years.

ACKNOWLEDGED AND AGREED

Company Name: _____

Title: _____

Signature: _____

Date: _____

FLEET COMPLIANCE CERTIFICATION

Bidder hereby acknowledges that they have reviewed the California Air Resources Board's (CARB) policies, rules and regulations and are familiar with the requirements of Title 13, California Code of Regulations, Division 3, Chapter 9, effective on January 1, 2024 (the "Regulation"). Bidder hereby certifies, subject to penalty for perjury, that the option checked below relating to the Bidder's fleet, and/or that of their subcontractor(s) ("Fleet") is true and correct:

- The Fleet is subject to the requirements of the Regulation, **and the appropriate Certificate(s) of Reported Compliance have been attached hereto.**
- The Fleet is exempt from the Regulation under section 2449.1(f)(2), and a signed description of the subject vehicles, and reasoning for exemption has been attached hereto.
- Bidder and/or their subcontractor is unable to procure R99 or R100 renewable diesel fuel as defined in the Regulation pursuant to section 2449.1(f)(3). Bidder shall keep detailed records describing the normal refueling methods, their attempts to procure renewable diesel fuel and proof that shows they were not able to procure renewable diesel (i.e. third-party correspondence or vendor bids).
- The Fleet is exempt from the requirements of the Regulation pursuant to section 2449(i)(4) because this Project has been deemed an Emergency, as defined under section 2449(c)(18). Bidder shall only operate the exempted vehicles in the emergency situation and records of the exempted vehicles must be maintained, pursuant to section 2449(i)(4).
- The Fleet does not fall under the Regulation or are otherwise exempted, and a detailed reasoning is attached hereto.

Name of Bidder: _____

Signature: _____

Name: _____

Title: _____

Date: _____

VENDOR SECURITY QUESTIONNAIRE



INSTRUCTIONS: Vendors will need to answer as many questions as possible for MTS Information Security and Intelligence group to review.

Question	Proposer Explanation/Notes
Governance and Organizational Structure	
1. Who is responsible for cybersecurity within the organization?	
2. Is there a chief information security officer (CISO)?	
3. Is there a cross-organizational committee that meets regularly on cybersecurity issues?	
4. Have you participated in a cybersecurity exercise with your senior executives?	
5. How do you prioritize your organization's most critical assets?	
6. How do you specifically protect customer information?	
7. Have you ever experienced a significant cybersecurity incident? Please define and describe it	
8. What types of cybersecurity policies do you have in place in your organization today?	
9. Do you outsource any IT or IT security functions to third-party service providers? If so, who are they, what do they do, and what type of access do they have?	
10. How frequently are your employees trained on your IT security policies, and do you use automated assessments?	
Security Controls and Technology	
1. How do you inventory authorized and unauthorized devices and software?	
2. Have you developed secure configurations for hardware and software?	
3. How do you assess the security of the software that you develop and acquire?	
4. What processes do you use to monitor the security of your wireless networks?	
5. Do you have data recovery capabilities?	
6. Do you have automated tools that continuously monitor to ensure malicious software is not deployed?	
7. Describe the processes and tools you use to reduce and control administrative privileges.	
8. What processes do you have in place to prevent the exfiltration of sensitive data, particularly sensitive customer data like ours?	

9. How do you plan and prepare for a cybersecurity incident? What processes do you have in place to respond to an incident? Do you regularly practice those things?	
10. Do you conduct regular external and internal tests to identify vulnerabilities and attack vectors, including penetration testing, red team exercises, or vulnerability scanning	
11. From whom do you receive cyberthreat and cyber vulnerability information and how do you use that information?	
12. How do you manage remote access to your corporate network?	
13. Do you have a removable media policy and controls to implement the policy?	
14. How do you monitor for unauthorized personnel, connections, devices, and software?	
15. Describe the process you have in place to communicate to us about security incidents affecting our data.	

ACKNOWLEDGED AND AGREED

Company Name: _____

Contact Name: _____

Job Title: _____

Email: _____

Phone Number: _____

SAFETY DEPARTMENT STANDARD OPERATING PROCEDURES

FOR CONTRACTORS SAFETY AND HEALTH REQUIREMENTS

(SAF 016-03)

January 2003

SAF 016-03

Purpose: To establish environmental, safety and health requirements for the San Diego Metropolitan Transit System (MTS) Contractors.

Background: MTS is committed in providing and maintaining a safe work place, safe plant and equipment, and a safe and competent workforce as required by legislation and best industrial practice for our employees, customers, visitors, and general public.

To support this commitment, we require our Contractors to provide adequate leadership and safety training for their employees and require the same of their sub-Contractors.

Objectives: This SOP requires all MTS Contractors to:

- Comply with the environmental, safety and health requirements of the contract as per FTA, OSHA, Cal OSHA, and San Diego Metropolitan Transit System (MTS).
- Assign a competent person the responsibility for the implementation of the safety regulations, personal protective equipment usage, and compliance with hazardous materials/environmental policies, and drug and alcohol program.
- Ensure that all Contractor employees and sub-Contractors are trained and educated in safety and support on-site Contractors on safe work and MTS safety programs.
- Sign the MTS Contractual Agreement with Outside Agencies (Safety Rules).

MTS Representatives are required to:

- Pro-actively monitor the Contractors' workplace to identify all occupational health and safety hazards – Departmental/Safety representative.
- Safety and contract requirements compliance – Audit/Inspection conducted and documented (schedule and spot check) by Quality Assurance Department.

NOTE: Copies of both MTS Illness and Injury Prevention Program (IIPP) and the MTS Maintenance Department Code of Safe Practices are available in the Safety Department's office. MTS handles the Engineering/Construction site safety plans.

SAFETY DEPARTMENT SAFETY RULES

MTS Contractual Agreement with Outside Agencies

Work on MTS Premises

A. Safety Rules

These safety rules apply specifically to Contractors, Contractor's employees, or sub-Contractors working on Metropolitan Transit System (MTS) property. Any loss or damage, including death, resulting from Contractors, Contractor's employees, or subcontractor's negligence shall hold MTS management and employees harmless from any such loss. No work shall be performed on MTS property without approval and proper permits, when required. Requirements:

1. Comply with Cal OSHA, state, local and MTS' safety, and environmental policies.
2. Observe and follow all posted facilities safety regulations.
3. Use the proper Personal Protective Equipment required for the job.
4. No illegal drugs or alcohol will be consumed on site or off the premises while working for MTS.

B. Use of Tools and Equipment (when required)

1. Required Tools and Equipment must be in good condition, safe for use and calibrated (if required).
2. Follow safe engineering work practices/procedures.
3. Wear the required personal protective equipment when using tools.

C. Machinery and Vehicles (when required)

1. Do not attempt to operate MTS machinery or equipment without special permission.
2. Only licensed operators may operate Forklift Trucks and other equipment on MTS occupied spaces.

D. Contractor Requirements (when required)

1. Valid Contractor's license number.

ACKNOWLEDGED AND AGREED

Company Name: _____

Print Name: _____

Title: _____

Signature: _____

Date: _____

BILL OF MATERIALS

[Title] – MATERIALS

If necessary, use separate sheet(s) & submit with your Proposal.

QTY.	UNIT OF MEASURE (UOM)	PART NUMBER	PART DESCRIPTION

REQUEST FOR PRE-OFFER CHANGES OR APPROVED EQUAL

This form may be used for requested clarifications, changes, substitutes or approval of items equal to items specified with a brand name, and must be submitted as far in advance of the Due Date as specified in "Calendar of Events – Deadline for Submitting Questions". Complete documentation in support of an "or equal" contention will be required. The documentation to be provided is as follows:

1. Direct technical and performance comparisons between the vendor's product and the OEM currently used by the San Diego Metropolitan Transit System (MTS).
2. Submission of proof which illustrates that the product complies and adheres to appropriate industry standards including ASTM, FMVSS, MIL, SAE, or UL.
3. "Accredited Independent Laboratory" analysis report comparing the proposed product with the OEM currently used by MTS.
4. Physical characteristics, properties, specifications, and drawings of the vendor's product.
5. Copy of Manufacturer's Quality Assurance Program and Quality Assurance Manual, if available.
6. Contact names and telephone numbers of other municipalities with transit fleets and other users that utilize the proposed product from the vendor.

Vendor should make its best efforts to provide all (6) product "Evaluation Criteria" points by numbering all six (6) points on the submitted documentation. This will enable all non-technical personnel to identify if the criteria are satisfied.

Copy this form if needed for additional submittals.

Request No: _____ Section Title: _____ Proposer: _____
Page: _____ Section No.: _____
Questions/Clarifications or Approved Equal:

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATE FORM

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to submit a proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No proposal will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Proposer hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.

Bidder further acknowledges:

- Proposer shall maintain a current DIR registration for the duration of the project.
- Proposer shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
- Failure to submit this form or comply with any of the above requirements may result in a finding that the proposal is non-responsive.

PRIME CONTRACTOR

Business Name: _____
Registration No.
(if applicable): _____
DUNS No.: _____
Company Name: _____
Print Name: _____
Title: _____

MTS CONSULTANT FORM 700 FILER CONTACT INFORMATION

Include contractor and subcontractor contact information along with the date the individual began or ended performing project management responsibilities. Refer to the *conflict of interest laws for MTS consultant* clause for additional information. Return this form clerkoftheboard@sdmts.com.

COPY THIS FORM IF NEEDED FOR ADDITIONAL ENTRIES.

Contract No.: _____ Contract Name: _____

700 FORM FILER	
Filer's Full Legal Name:	_____
Title:	_____
E-Mail Address:	_____
Phone Number:	_____
Address:	_____
Company Name:	_____
Assuming Office Effective Date: (contract start date)	_____
	<input type="checkbox"/> Prime Contractor
	<input type="checkbox"/> Subconsultant

700 FORM FILER	
Filer's Full Legal Name:	_____
Title:	_____
E-Mail Address:	_____
Phone Number:	_____
Address:	_____
Company Name:	_____
Assuming Office Effective Date: (contract start date)	_____
	<input type="checkbox"/> Prime Contractor
	<input type="checkbox"/> Subconsultant

PROPOSED CARRIER FORM

The following information must be completed in its entirety or Proposers proposal may be rejected as nonresponsive:

1. Proposers primary contact with first and second level backup:

a. Primary Contact _____
Phone: _____

b. First Level Backup Contact: _____
Phone: _____

c. Second Level Backup Contact: _____
Phone: _____

2. Name of Carriers:

a. Local Carrier: _____

b. Long Distance Carrier: _____

3. Revenue rate paid on gross revenues generated by each pay phone site and on long distance revenue from the designated primary long distance, inter-exchange carrier.

a. Local Carrier: _____

b. Long Distance Carrier: _____

Submittals - The following documents must be submitted with your proposal:

1. Samples of required labeling as described in the Scope of Work.
2. Attach rate structure that will be charged to MTS customers. MTS customers must not be surcharged in any way or proposal may be rejected as nonresponsive.

BUY AMERICA (IRON, STEEL MANUFACTURED PRODUCTS AND CONSTRUCTION MATERIALS)

ALTERNATIVE A

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA REQUIREMENTS

The Proposer/Bidder hereby certifies that it will comply with the requirements of Section 49 U.S.C. 5323 (j)(1), the applicable regulations in 49 C.F.R. 661, and Section 70914 of the Infrastructure Investment Jobs Act.

ACKNOWLEDGED AND AGREED

Print Name: _____
Signature: _____
Date: _____

CERTIFICATE FOR NON-COMPLIANCE WITH BUY AMERICA REQUIREMENTS

ALTERNATIVE B

The Proposer/Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j)(1) or Section 70914 of the Infrastructure Investment Jobs Act but it may qualify for an exception to the requirement pursuant to Section 49 U.S.C. 5323 (j)(2), and the applicable regulations in 49 C.F.R. 661.7 or Section 70914 of the Infrastructure Investment Jobs Act.

ACKNOWLEDGED AND AGREED

Print Name: _____
Signature: _____
Date: _____

Complete the form on the next page if you select Alternative B.

NOTE: COMPLETE EITHER ALTERNATIVE A OR B - DO NOT COMPLETE BOTH.

BUY AMERICA (IRON, STEEL, MANUFACTURED PRODUCTS AND CONSTRUCTION MATERIALS)

ADDITIONAL INFORMATION FOR BUY AMERICA CERTIFICATE - ALTERNATIVE B

The Proposer/Bidder hereby certifies that it cannot comply with the requirements of Section 49 U.S.C. 5323 (j)(1) or Section 70914 of the Infrastructure Investment Jobs Act, but it may qualify for an exception to the requirement pursuant to Section 49 U.S.C. 5323 (j)(2), and the applicable regulations in 49 C.F.R. 661.7 or Section 70914 of the Infrastructure Investment Jobs Act.

Item No.	Description	Type of Waiver Requested by No. (1)	Indicate Rolling Stock or Nonrolling Stock	Description of Foreign Components of Items	Unit Procurement Cost of Foreign Components of Items

Notes: (1) For "Type of Waiver Requested," See Buy America, Section 7-5.8. List 1, 2, 3 or 4.

(2) Proposer must complete either Alternative A or B, Buy America Certificate.

BUY AMERICA – ROLLING STOCK

ALTERNATIVE A

CERTIFICATE OF COMPLIANCE WITH SECTION BUY AMERICA ROLLING STOCK

The Proposer hereby certifies that it will comply with the requirements of 49 U.S.C. 5323 (j) as amended and the regulations in 49 C.F.R. 661.11.

ACKNOWLEDGED AND AGREED

Print Name: _____

Signature: _____

Date: _____

ALTERNATIVE B

CERTIFICATE FOR NON-COMPLIANCE WITH BUY AMERICA ROLLING STOCK

The Proposer hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. (j)(2)(c) as amended and regulations in 49 C.F.R. 661.7.

ACKNOWLEDGED AND AGREED

Print Name: _____

Signature: _____

Date: _____

Complete the form on the next page if you select Alternative B.

NOTE: COMPLETE EITHER ALTERNATIVE A OR B - DO NOT COMPLETE BOTH.

BUY AMERICA – ROLLING STOCK

ADDITIONAL INFORMATION FOR BUY AMERICA CERTIFICATE - ALTERNATIVE B

The Proposer hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323 (j)(2)(c) and regulations in 49 C.F.R. 661.7.

Item No.	Description	Type of Waiver Requested by No.(1)	Indicate Rolling Stock or Nonrolling Stock	Description of Foreign Components of Items	Unit Procurement Cost of Foreign Components of Items

Notes: 1) For "Type of Waiver Requested," See Buy America, Section III. List Type A,B,C, or E.
 (2) Proposer must complete either Alternative A or B, Buy America Certificate.

BUY AMERICA (SPARE PARTS/ SUBCOMPONENTS)

MTS has determined that the parts being procured are subcomponents.

Therefore, purchase of these goods is Buy America compliant regardless of the country of origin.

Please specify the reason for complying by checking one of the two boxes below.

The Proposer/Bidder hereby certifies that it will comply with the requirements of 49 U.S.C §5323(j), the regulations in 49 C.F.R. §661.11 and Section 70914 of the Infrastructure Investment Jobs Act.

1. **THIS PROCUREMENT IS BUY AMERICA COMPLIANT SINCE MTS HAS DETERMINED THAT THE PRODUCT IS A SUBCOMPONENT REGARDLESS OF THE COUNTRY OF ORIGIN.**
See "Buy America Requirements; End Product Analysis and Waiver, Docket No. FTA-2005 23082", (September 2007)

2. **THIS PROCUREMENT IS BUY AMERICA COMPLIANT SINCE THE PRODUCT IS 100% PRODUCED IN THE UNITED STATES.**
49 U.S.C. §5323(j)(1); Section 70914 of the Infrastructure Investment Jobs Act

NOTE: if the spare parts at issue vary between domestic and foreign countries of origin, ***please provide additional details on the following page.***

ACKNOWLEDGED AND AGREED

Print Name: _____

Signature: _____

Date: _____

Alternative B language continues onto the next page

BUY AMERICA - (SPARE PARTS / SUBCOMPONENTS)

ADDITIONAL INFORMATION FOR BUY AMERICA CERTIFICATE

The Proposer/Bidder hereby provides the following information concerning the subcomponents or spare parts identified in the scope of work.

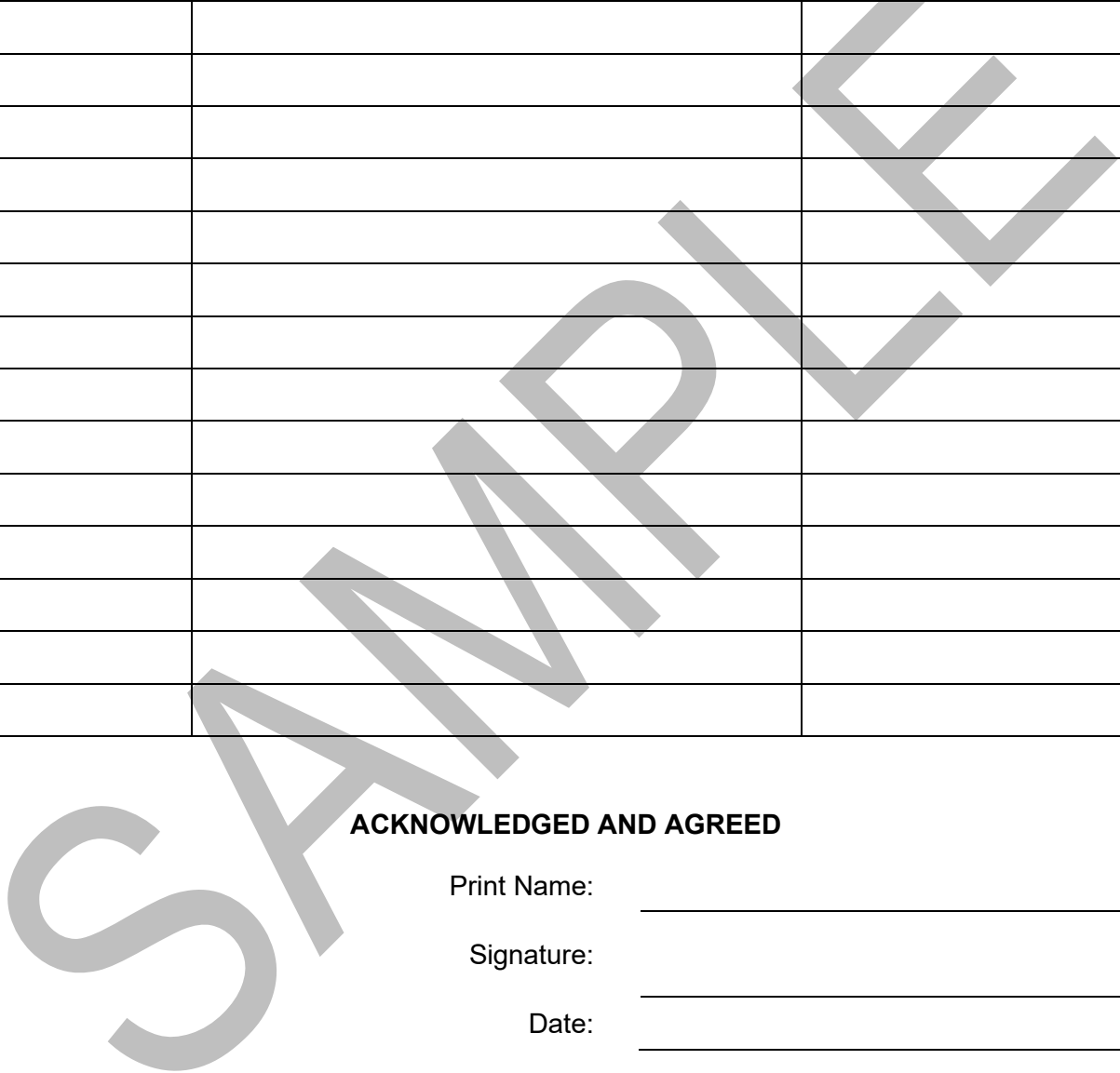
Item No.	Description	Country of Origin

ACKNOWLEDGED AND AGREED

Print Name: _____

Signature: _____

Date: _____



CERTIFICATE OF RESTRICTIONS ON LOBBYING

The CONTRACTOR hereby certifies 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 any 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. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
3. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence 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. Check one of the following Boxes.

Does NOT Apply	<input type="checkbox"/>
Applies	<input type="checkbox"/>

This certification is a material representation of fact upon which reliance is placed when this transaction is made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. 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.

Executed this _____ day of _____, 20__.

ACKNOWLEDGED AND AGREED

Name of Contractor: _____

Signature: _____

Date: _____

CAMPAIGN CONTRIBUTION DISCLOSURE FORM AND INFORMATION SHEET

This form pertaining to campaign contributions must be completed by individuals and firms who may be awarded a license, permit, or other entitlement for use by the San Diego Metropolitan Transit System ("MTS") Board of Directors. License, permit or other entitlement for use is defined in Government Code Section 84308(a)(5). Section 84308 reads as follows:

- A. The definitions set forth in this subdivision will govern the interpretation of this section.
- (1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.
 - (2) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.
 - (3) "Agency" means an agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.
 - (4) "Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.
 - (5) "License, permit, or other entitlement for use" means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid,¹ labor, or personal employment contracts), and all franchises.
 - (6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.
- B. No officer of an agency will accept, solicit, or direct a contribution of more than \$250 from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition will apply regardless of whether the officer

¹ Note that the FPPC has limited the "competitively bid" exception to low-bid contracts. Negotiated requests for proposals do not qualify as a "competitively bid" contract under this provision.

accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

- C. Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than \$250 from a party or from any participant must disclose that fact on the record of the proceeding. No officer of an agency will make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than \$250 within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7. If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she will be permitted to participate in the proceeding.
- D. A party to a proceeding before an agency involving a license, permit, or other entitlement for use must disclose on the record of the proceeding any contribution in an amount of more than \$250 made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding will make a contribution of more than \$250 to any officer of that agency during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.
- E. Nothing in this section will be construed to imply that any contribution subject to being reported under this title will not be so reported." (See also Title 2, California Code of Regulations Sections 18438.1 - 18438.8)

The current [MTS Board members are listed HERE](#).

For more information, contact the Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, California, 95814, (916) 322-5660.

Name of Contributor:	_____
Date(s):	_____
Amount:	_____

By signing below, I acknowledge that no contribution(s) aggregating more than \$250 were made by the Consultant or its agents to an MTS Board Member or Officer within the time period specified in Government Code Section 84308(b) or (c).

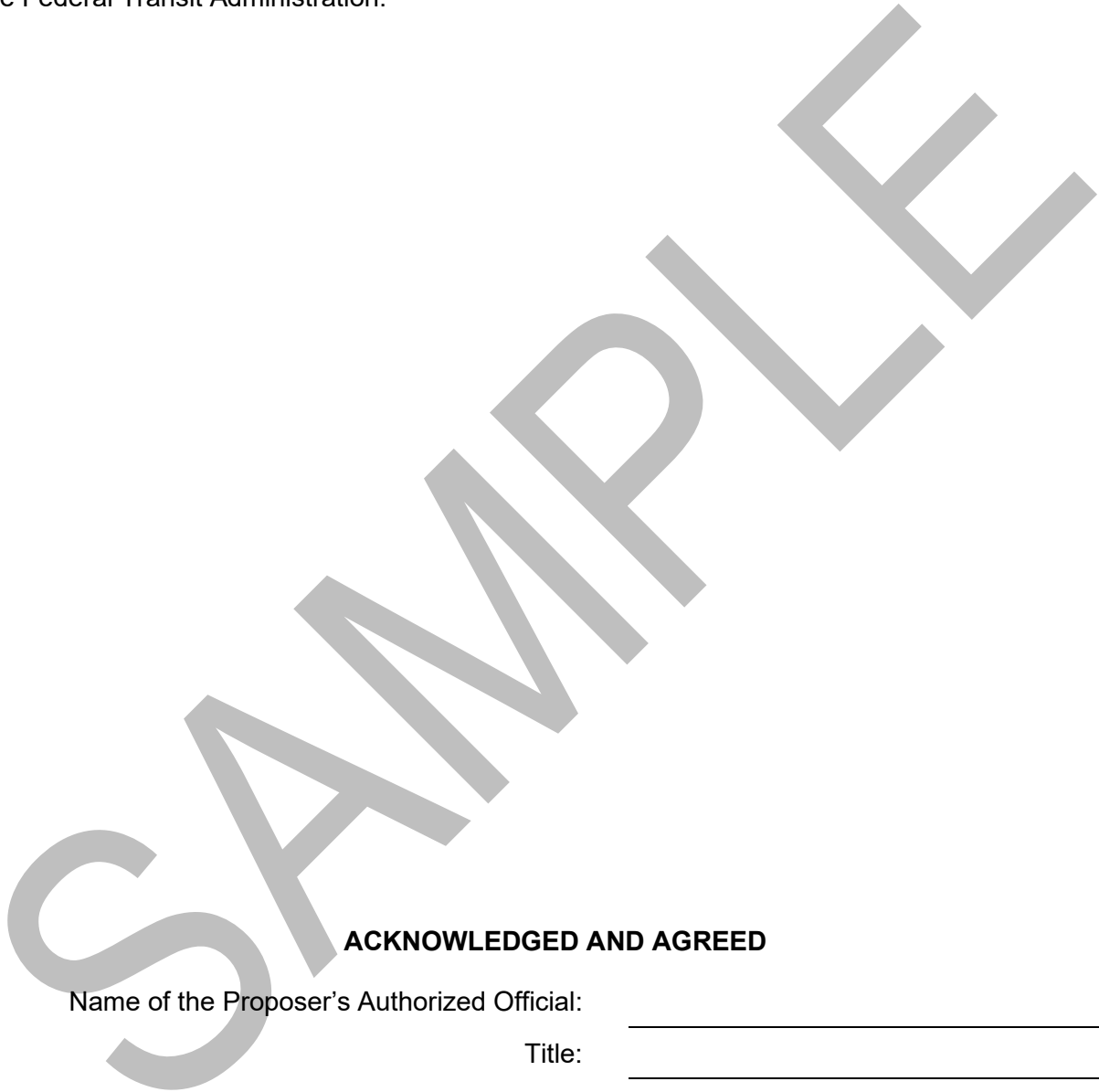
ACKNOWLEDGED AND AGREED

Signature of Party and/or Party's Agent: _____
Date: _____

SAMPLE

TRANSIT VEHICLE MANUFACTURES (TVM) DBE APPROVAL CERTIFICATION

I hereby certify that the Proposer has complied with the requirements of 49 C.F.R. 26.49, Participation by Disadvantaged Business Enterprises in DOT Program, and that our goals have not been disapproved by the Federal Transit Administration.



ACKNOWLEDGED AND AGREED

Name of the Proposer's Authorized Official: _____

Title: _____

Signature of the Proposer's Authorized Official: _____

Date: _____

SAMPLE PROMPT PAYMENT CERTIFICATION FORM

SAN DIEGO METROPOLITAN TRANSIT SYSTEM PROMPT PAYMENT CERTIFICATION FORM

PURPOSE: This certification is used to monitor compliance by prime contractors to promptly pay its subcontractors. In accordance with DOT's DBE Regulations and MTS's DBE Program, prime contractors must pay its subcontractors for satisfactory performance of their contracts no later than seven (7) days from receipt of payment from MTS. Any delay or postponement of payment over thirty (30) days must be for good cause and after receipt of prior written approval from a MTS Project Manager.

INSTRUCTIONS: Please complete the below Prompt Payment Certification Form and return to MTS within **14 days** after receipt of payment from MTS at the following email address: ContractAdmin@sdmts.com. If there is more than one subcontractor on the contract, please complete a separate Prompt Payment Certification Form for each subcontractor.

1. CONTRACTOR INFORMATION

Contractor Name: _____ Contract No. _____ Work Order No. _____
Telephone No. _____ Email Address _____

2. PAYMENT INFORMATION

- a) Name of Subcontractor: _____
- b) Type of Services or Materials Provided by Subcontractor (state NAICS code if known?): _____
- c) Date Last Payment Received from MTS?: _____
- d) Was any of that payment for services/materials provided by the subcontractor?: _____
* If YES, please answer questions e-h. If NO, proceed to Part 3 Certification.
- e) Payment Amount: _____
- f) Payment Date: _____
* Prime contractors must pay their subcontractors for satisfactory performance of their contracts no later than seven (7) days from receipt of payment from MTS
- g) If payment was delayed or postponed over thirty (30) days, who at MTS pre-authorized the delay or postponement and when was such pre-authorization given?: _____
- h) If payment was delayed or postponed over thirty (30) days, was the reason for good cause? (Explain): _____

3. CERTIFICATION

The contractor hereby certifies that the foregoing Prompt Payment Certification Form is true and correct.

Signature _____ Title _____ Date _____

*** FOR MTS USE ONLY ***
Date Certification Received _____ Contractor Compliant _____