

1. SAMPLE OF STANDARD AGREEMENT, STANDARD CONDITIONS

1255 Imperial Avenue, Suite 1000
San Diego, CA 92101
Tel 619.231.1466 Fax 619.234.3407

**STANDARD AGREEMENT
FOR
MTS DOC. NO. X###.0-##
PROJECT NAME**

THIS AGREEMENT is entered into this _____ day of _____, 20## 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.) Email : _____

Telephone: _____

Authorized person to sign contracts _____
Name Title

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

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



STANDARD CONDITIONS

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.

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.

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.

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.

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
Attention: Chief Executive Officer
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490

To Contractor:

As shown on front page.

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. 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.

8. TERMINATION OF AGREEMENT

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 effected 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.

8.2. TERMINATION FOR DEFAULT

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.

8.3. TERMINATION FOR DEFAULT

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.

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.

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.

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.

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.

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.

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.

15. EXPEDITING

The goods furnished under this Agreement shall be subject to expediting by MTS. MTS shall be afforded free access to Contractor's shops, factories, or places of business, and those of Contractor's suppliers, for expediting purposes. As required by MTS, Contractor shall supply schedules, unpriced copies of purchase orders and progress reports for MTS's use in expediting.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

24.1. 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.

- 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, nonowned, 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.

24.2. ADDITIONAL COVERAGES REQUIRED (AS INDICATED)

- (1) OWNER-PROVIDED BUILDER'S RISK

PROVIDED

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.

(2) Railroad Protective or Equivalent

REQUIRED

Any exclusions relating to performance of operations within the vicinity of any railroad, bridge, trestle, track, roadbed, tunnel, underpass, or crossing must be deleted.

Option: purchase separate Railroad Protective Liability Policy as required.

(3) Professional Liability

REQUIRED

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.

(4) Pollution Legal Liability

REQUIRED

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.

(5) Contractor Equipment

REQUIRED

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.

(6) Installation Floater

REQUIRED

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.

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

REQUIRED

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 a MTS vehicle, which results in a third party claim of physical damage or bodily injury.

(8) Crime Fidelity Insurance

REQUIRED

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

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

REQUIRED

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.

(10) Primary and Non-Contributory Insurance

REQUIRED

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).

(11) Property Insurance

REQUIRED

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.]

24.3. 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

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

<input type="checkbox"/> B (1) Builder's Risk	Replacement Cost
<input type="checkbox"/> B (2) Railroad Protective	\$
<input type="checkbox"/> B (3) Professional Liability	\$
<input type="checkbox"/> B (4) Pollution Liability	\$
<input type="checkbox"/> B (5) Contractor Equipment	Replacement Cost
<input type="checkbox"/> B (6) Installation Floater	Replacement Cost
<input type="checkbox"/> B (7) Garage Keeper's Legal Liability (Combined Single Limit (CSL))	(Per Occurrence)
<input type="checkbox"/> B (8) Crime Fidelity Insurance	\$
<input type="checkbox"/> B (9) Umbrella or Excess Liability(if required to meet liability limits above)	\$
<input type="checkbox"/> B (11) Property Insurance	\$

24.4. 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.

24.5. 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.

24.6. 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.

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.

26. CONSIDERATION PAID

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.

27. COST PRINCIPLES

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

The Contractor also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments.

Any costs for which payment has been made to the Contractor that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments, are subject to repayment by the Contractor to MTS.

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.

29. RECORDS RETENTION

The Contractor and any Subcontractor shall maintain all data, documents, books, reports, payroll, statistics, subcontracts, leases, arrangements, papers, accounting records, and other evidence and supporting materials pertaining to the performance of the contract including, but not limited to, the costs of administering the contract. The Contractor shall make such materials available at its respective office at all reasonable times during the Agreement and for three (3) years from the date of the final payment under the Contract and three (3) years from the date that any pending legal matters relating to the Contract are closed. MTS, the state, the State Auditor, or any duly authorized representative shall have access to any books, records, and documents of the Contractor that are pertinent to the contract for audit examination, excerpts, and transactions, and copies thereof shall be furnished if requested.

30. RECORDS RETENTION

The Contractor and any Subcontractor shall retain complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type and supporting materials related to those records. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor 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. Contractor shall provide sufficient access to the U.S. Secretary of Transportation, Comptroller General of the U.S., FTA, DOT Office of Inspector General, the State, MTS or any of their authorized representatives to inspect and audit records pertaining to the performance of this Contract as reasonably may be required. The Contractor shall also permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

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

MTS encourages the participation of DBEs, minority owned businesses (MBEs), women owned businesses (WBEs), disabled veteran business enterprises (DVBEs) lesbian gay bisexual transgender businesses (LGBTs), and small businesses (SB) in the performance of all of its contracts. MTS encourages the Contractor to outreach to DBEs and other small business enterprises for any potential subcontracting opportunities on this project. MTS tracks DBE, MBE, WBE, DVBE, LGBT and SB participation and therefore requires all successful proposers to report whether the prime contractor and any subcontractors are a DBE or other small business enterprise. Contractor must complete MTS's Designation of Subcontractors and DBE Program - Information for MTS's Bidder List. If interested in learning about the eligibility requirements to become certified as a DBE, MBE, WBE, DVBE, LGBT or SB or how to view a list of certified firms, please contact MTS's DBE Liaison Officer, Samantha Leslie, at Samantha.Leslie@sdmts.com for more information.

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

This project is subject to Title 49, Code of Federal Regulations part 26 (49 CFR Part 26), entitled "Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation (DOT) Financial Assistance Programs." MTS' DBE program has an aspirational goal of 2.9% participation by certified DBE's over Federal Fiscal years 2019 to 2021 (October 1, 2018 – September 30, 2021) time period. 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:

- A. 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;

- B. 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*;
- C. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- D. Help remove procurement and contracting barriers, which impede DBE participation in MTS DOT-assisted contracts;
- E. Monitor and enforce contractors' compliance in meeting established goal objectives and program requirements;
- F. Assist in the development of DBEs and Small Businesses to increase their ability to compete successfully in the market place outside the DBE Program;
- G. 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.

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:

- A. 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.
- B. 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.
- C. 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.
- D. 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.
- E. 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.

40. 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.

41. 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:

41.1. 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.

41.2. 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.

41.3. SURVIVAL OF MTS' INDEMNIFICATION RIGHTS:

The rights and obligations contained in section, "Indemnification of MTS", will survive any termination or expiration of this Agreement.

41.4. 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.

42. EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAM

42.1. MTS'S EEO 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' EEO Program for Employees and Contractors, MTS Policy No. 25, is part of this Agreement (a copy can be obtained from MTS' Clerk of the Board).

42.2. CONTRACTOR'S EEO 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 EEO 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.

42.3. 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.

43. 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.

43.1. 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:

43.2. 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. 5 845(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.

44. ROADWAY WORKERS PROTECTION 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 "Roadway Workers Protection" 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.

45. FLAGGING

Any work within fifteen (15) feet of active rail, or as otherwise identified by MTS, shall require a 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 a 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.

46. 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.

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.

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.

49. WATER QUALITY MANAGEMENT AND COMPLIANCE

1. 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 storm water pollution prevention plan relevant to the provision of the Services.
2. 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.

3. 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.

4. Liability for Non-compliance.

A. 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.

B. 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.

C. 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.

50. 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 insure 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.