

# MONTEREY-SALINAS TRANSIT



**INVITATION FOR BIDS  
IFB #19-11**

**SPECIFICATIONS  
FOR**

**CONSTRUCT IMPROVEMENTS  
SALINAS TRANSIT CENTER (STC)**

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## **SECTION 1 INTRODUCTION**

### **1.1 GENERAL**

Monterey-Salinas Transit District (MST) is requesting bids from companies interested in constructing facility improvements at the Salinas Transit Center, 110 Salinas Street, Salinas, California.

It is the intent of MST to award a contract to a single general contractor to perform all the work and deliver all the services described in the Scope of Work.

The complete specifications packet created by The Paul Davis Partnership, Specifications Manual for the Salinas Transit Center Improvements and all drawings incorporated herein, provides full details for all components of the construction project. The purpose of the Section below is to highlight the general requirements that are covered in the Specifications and to identify related tasks that are beyond the scope of this project.

## **SECTION 2 INTRODUCTION TO SCOPE OF WORK/SERVICES**

### **2.1 CONTRACTOR REQUIREMENTS**

The qualified contractor will provide construction services and procure equipment to deliver the following general improvements:

- A. Construct new addition including demo inside the existing building. Includes doors, windows, flooring and etc. All other Demo excluded- Done by others.
- B. Install all new Site Work Requirements (for new addition) including landscaping, flat concrete, slab, underground and pavers. The Portland Loo will be purchased by MST, but installed by Contractor.
- C. All electrical and plumbing requirements for the addition. Security and camera systems excluded- Done by others. (First Alarm)
- D. All paint for exterior and interior of the new addition.
- F. Purchase and install all restroom equipment such as paper towel dispenser and etc. (As per MST Specifications)
- G. Install new HVAC Requirements for the new addition and including the Customer Service Area. Demo the existing non-used HVAC Equipment.

## 2.2 WORK TO BE PERFORMED BY OTHERS

The following related tasks are not within the scope of this project and will be performed by others

- A. Securing permits from the City of Salinas.
- B. Demo of existing restrooms, trellis and flat concrete for the new addition.
- C. Installation and connection of security cameras and supporting hardware including signage.
- D. Furnishing any furniture or window coverings.
- E. Landscaping maintenance after placement of new landscaping and irrigation.
- F. Corrections to any fire code conditions.
- G. Painting of curbs in the bus travel way and in the public right of way.

## 2.3 TECHNICAL SPECIFICATIONS

Technical specifications are included in a separate document prepared by The Paul Davis Partnership, and entitled **Specifications Manual for Salinas Transit Center Improvements**. The most recent version is dated November 9, 2018 and is the document to be used as the basis for developing the lump sum bid amount. The specifications section is self-contained with its own table of contents and page enumeration. Other documents included are, Architectural, Civil, Structural, Mechanical, Electrical, Landscape, Portland Loo, and the Geotechnical report. These documents comprise the entire bid package.

## 2.4 PROJECT SCHEDULE

The schedule for this project is as follows:

Release of the IFB	January 15, 2019
Pre-bid Conference	February 1, 2019 at 10:00 a.m.
Written questions/requests for Clarification Due	February 8, 2019
MST responds to questions/clarification	February 11, 2019
<b>Closing Date for IFB submittals</b>	<b>February 27, 2019 at 4:00 p.m.</b>
Award of Contract	March 11, 2019
Notice to Proceed	March 11, 2019
Estimated construction completion	December 2019

## SECTION 3 INSTRUCTIONS TO BIDDERS

### 3.1. PRE-BID CONFERENCE

**A pre-bid conference will be held on February 1, 2019, at 10:00 a.m. (PST) at MST's Salinas Division Office, 443 Victor Way, Salinas, California.** (Note: this is not the project site) All prospective bidders are encouraged to attend the pre-bid conference. Attendance at the pre-bid conference is not mandatory to submit a bid. The job site walk will take place immediately following the pre-bid conference.

Questions will not be answered at the conference. However, attendance will allow potential bidders a better understanding of the project scope and will allow MST to better understand questions that may be received in writing.

### 3.2. EXAMINATION OF BID DOCUMENTS

By submitting a bid Bidder represents that it has thoroughly examined and become familiar with the scope of work and all requirements under this IFB and that it is capable of performing quality work to achieve MST's objectives.

### 3.3. ADDENDA

Any MST changes to the requirements will be made by written addendum to this IFB. Any written addenda issued pertaining to this IFB shall be incorporated into the terms and conditions of any resulting Agreement. MST will not be bound to any verbal or oral modifications to or deviations from the requirements set forth in this IFB.

### 3.4. CLARIFICATIONS

#### a. Examination of Documents

Should a potential Bidder require clarifications of this IFB, the Bidder shall notify MST in writing in accordance with Section b.(2) below. Should it be found that the point in question is not clearly and fully set forth, MST will issue a written addendum clarifying the matter which will be sent to all persons who have requested the IFB.

#### b. Submitting Questions and/or Requests for Clarification:

- (1) All questions, clarifications or comments must be received in writing by MST no later than February 8, 2019 at 5:00 p.m. (PST), and be addressed to:

Purchasing Manager  
Monterey Salinas Transit  
19 Upper Ragsdale Drive, Suite 200  
Monterey, California 93940

MST will accept questions sent by email. Email is [samorim@mst.org](mailto:samorim@mst.org)

- (2) Requests for clarifications, questions and comments must be clearly labeled, "Construct Improvements – STC." MST is not responsible for failure to respond to a request that has not been labeled as such. Questions/Clarification requests received after the published deadline may or may not be considered and/or responded to by MST.

#### c. MST Responses

Responses from MST will be in the form of a written Addendum, if appropriate, to provide information to all potential Bidders, and will be emailed and posted to [www.mst.org](http://www.mst.org), no later than February 11, 2019.

If the answer to the clarification/question received is already provided in the IFB, that information will be pointed out to the potential Bidder, either telephonically, via email, or in writing as determined by MST.

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3.5. SUBMISSION OF BIDS

a. Date and Time

Bids must be received before 4:00 p.m. (PST) on Wednesday, February 27, 2019. Bids received after that date and time will not be considered and will be returned unopened.

b. Mailing Address

Bids must be clearly marked on the exterior as “MST IFB 19-11 Construct Improvements - STC” and addressed to:

Monterey Salinas Transit  
ATTN: Purchasing Manager  
19 Upper Ragsdale Drive, Suite 200  
Monterey, California 93940

**Facsimile (FAX) bids will not be accepted or considered.**

c. Identification of Bids

Bidder shall submit an one (1) original and one (1) copy of its bid in a sealed package, addressed as shown above, bearing the Bidder’s name and return address.

d. Acceptance of Bid

- (1) MST reserves the right to accept or reject any and all bids, or any item or part thereof, or to waive any informalities or irregularities in bids.
- (2) MST reserves the right to withdraw this IFB at any time without prior notice and makes no representations that any contract will be awarded to any Bidder responding to this IFB.
- (3) MST reserves the right to postpone bid openings for the convenience of MST.

e. Failure to Respond

MST reserves the right to remove from its mailing lists for future IFBs, for an undetermined period of time, the name of any Bidder for failure to accept a contract, failure to respond to two (2) consecutive IFBs

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and/or unsatisfactory performance. Please note that a "No Bid" or a "Decline to Bid" is considered a response.

### 3.6. PRE-CONTRACTUAL EXPENSES

Pre-contractual expenses are defined as expenses incurred by Bidder in any of, but not limited to, the following:

- a. Preparing a bid in response to this IFB.
- b. Submitting a bid to MST.
- c. Negotiating with MST any matter related to this bid.
- d. Any other expenses incurred by Bidder prior to date of any contract award.

MST shall not, in any event, be liable for any pre-contractual expenses incurred by Bidder in the preparation of its bid. Bidder shall not include any such expenses as part of its bid.

### 3.7. JOINT OFFERS

Where two or more Bidders desire to submit a single bid in response to this IFB, they should do so on a prime contractor/sub-contractor basis rather than as a joint venture. MST's intent is to contract with a single firm. That firm may have agreements or sub-contracts with other firms. This information must be disclosed as part of the IFB response.

### 3.8. TAXES

Bids are subject to state and local sales taxes. Any bids that include materials subject to sales tax will include the most current sales tax rate for Monterey County. Federal excise taxes will not be included.

### 3.9. PROTEST PROCEDURES

MST has established a set of written protest procedures. These procedures can be found in the STANDARD TERMS and CONDITIONS section. To be considered, any protests filed by a Bidder in connection with this IFB must be submitted in accordance with MST's written procedures.

### 4.0. DEPARTMENT OF INDUSTRIAL RELATIONS

This is a public works project, subject to the prevailing wage requirements of the California Labor Code. Copies of the prevailing rate of per diem wages are available at the California Department of Industrial Relations web site [www.dir.ca.gov/DLSR/PWD/](http://www.dir.ca.gov/DLSR/PWD/). Contractor shall not pay less than the prevailing rate of wages. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015), unless



registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

## **SECTION 4 BID REQUIREMENTS AND CONTENT**

### **4.1 COVER LETTER/TRANSMITTAL LETTER**

Contractor shall draft a Cover Letter/Transmittal Letter, which shall contain at a minimum: contact information, contractors license number and expiration date, mailing and e-mail address.

### **4.2 BID FORM**

Attached Bid Form contains space to provide complete pricing information.

### **4.3 FORMS AND CERTIFICATIONS**

To be considered responsive, the following materials must accompany any bid submitted:

These Forms and Certifications are provided in Section 8:

- a. Application for DBE and/or California Unified Certification DBE status Certification (if applicable)
- b. Certificate of Primary Contractor Regarding Debarment
- c. Lobbying Certificate
- d. Buy America Certificate
- e. Subcontractors List
- f. MST Bidders/Bidders List form
- g. Non-Collusion Certificate
- h. Bid security Bond Form
- i. Performance Security Bond Form

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- j. Bidder's Statement Regarding Insurance Coverage
- k. Worker's Compensation Insurance Certificate
- l. Bidder information sheet(s)
- m. All-Purpose Acknowledgement Statement
- n. Certificate of Compliance
- o. Sample Contract (Section 9) - Bidder to provide written exception(s) to any of the terms and/or conditions of sample contract and return with bid submittal.
- p. Must be registered with the Department of Industrial Relations

## **SECTION 5 EVALUATION, SELECTION, AWARD AND ADMINISTRATION**

### **5.1 EVALUATION**

Determination of a responsible bidder will include, but not be limited to, an evaluation of the prior history and experience of the company to perform the requirements of the specifications. MST's determination of this evaluation shall be final. Criteria include

- (1) Qualifications of Firm:
  - (a) General and project -specific experience
  - (b) Resources available to perform the services
  - (c) Prior history of satisfactory service to other clients
- (2) Responsive Submittal
  - (a) Submittal of documents in full compliance with IFB

### **5.2 SELECTION**

A contract will be awarded to the firm submitting the lowest responsible, responsive bid that meets all specification requirements for the basic bid elements.

### **5.3 AWARD**

It is the intent of MST to make an award by the Board of Directors within thirty (30) days after bids are due.

### **5.4 CONTRACT ADMINISTRATION**

- a. The MST Project Manager will administer the operational aspects of the contract. Changes to the Scope of Services, contract cost, quantity, deliverables or project schedules shall be coordinated with the Project Manager and will be made official by properly executed written modification. Any proposed change or modification and all correspondence that in any way concerns the terms and conditions of this contract shall be submitted directly to the Project Manager at MST.
- b. Contractor shall immediately notify the Project Manager of any occurrence or condition that interferes with the full performance of the contract. If notification is through telephone exchange the Contractor will follow with a written notification within twenty-four (24) hours of the occurrence.

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- b. The Project Manager will be the primary point of contact for MST in coordinating contract management with the Contractor. Questions, issues and requests for clarifications should be directed to:

Paul W Davis  
Paul Davis Partnership Architects  
Telephone: 831-373-2784 ext 207  
[paulw@pauldavispartnership.com](mailto:paulw@pauldavispartnership.com)

Carl Wulf  
Facilities Manager  
Monterey-Salinas Transit  
One Ryan Ranch Road  
Monterey, CA 93940  
[cwulf@mst.org](mailto:cwulf@mst.org)

Telephone: (831) 264-9437

- d. All issues, decisions or potential contract changes in conflict with any term and/or condition of the contract are to be coordinated with the MST Purchasing Manager prior to a final determination.

## **SECTION 6 GENERAL TERMS AND CONDITIONS**

### **6.1 BID ACCEPTANCE PERIOD**

Bids are valid for a period of 90 days after opening.

### **6.2 RIGHTS RESERVED**

#### **6.2.1 Rejection**

MST reserves the right to reject any or all bids or any part thereof, or to accept any bid or any part thereof, or to waive any informality in any bid, deemed to be the best interest of MST.

#### **6.2.2 Cover**

Should the successful Bidder (Contractor) fail to comply with the conditions of this bid or fail to complete the requirements of the bid, MST reserves the right to complete the required work, at the expense of the Contractor.

### **6.3 SEVERABILITY**

If any provision, or any portion of any provision, of any contract resulting from this bid shall be held invalid, illegal or unenforceable, the remaining provisions or portions of any provisions shall be valid and enforceable to the extent possible.

### **6.4 PROHIBITED INTERESTS**

6.4.1 By submitting a bid, the Bidder represents and warrants that neither the MST General Manager/CEO, nor any MST employee, is in any manner interested directly or indirectly in the bid or in the Contract which may be awarded under it, or in any expected profits to arise.

6.4.2 No member, officer, or employee of MST, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in the Contract to be awarded.

### **6.5 CONTRACT**

Bidder's signed bid and written acceptance by MST shall constitute a Contract.

### **6.6 BIDDER AGREEMENT**

Submission of a signed bid will be interpreted to mean that Bidder has hereby agreed to all the terms and conditions set forth in this document.

#### 6.7 STATEMENT OF EXPERIENCE AND QUALIFICATIONS

The Bidder may be required upon request of MST to prove to MST's satisfaction that Bidder has the skill and experience and the necessary facilities and financial resources to perform in a satisfactory manner.

#### 6.8 WAIVER

The Bidder shall represent and warrant that it has sufficiently informed itself in all matters affecting the performance of the work called for in the scope of this bid; that it has checked its bid for errors and omissions; that the prices stated in its bid are correct and as intended by it and are a complete and correct statement of its prices for performing the work required by the Contract documents.

#### 6.9 COMPLIANCE WITH LAWS

The Contractor shall adhere to all applicable federal, state, and local laws, codes and ordinances, including, but not limited to, those promulgated by U.S. OSHA, California OSHA, U.S. EPA, the California State Department of Health Services, and the Monterey County Environmental Health Department.

#### 6.10 LAWS GOVERNING CONTRACT

This Bid and any resulting contract shall be governed and construed in accordance with the laws of the state of California. The parties stipulate that this contract was entered into in the County of Monterey, in State of California. The parties further stipulate that the County of Monterey, California, is the only appropriate forum for any litigation resulting from any breach hereof or any questions arising herefrom. All parties to this bid and any resulting contract agreed that Venue shall be within County of Monterey, California. Each party will perform its obligations hereunder in accordance with all applicable laws, rules, and regulations now or hereafter in effect.

#### 6.11 ATTORNEY FEES

In the event that suit is brought to enforce or interpret any part of this bid or resulting contract, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, a reasonable attorney's fee, including expert witness fees, as may be fixed by the court. These fees and cost shall be taxed as costs in that proceeding, and shall not necessitate the filing of a separate attempt to recover. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover its costs shall not recover attorney's fees. No sum for attorney's fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to recover its costs or attorney's fees.

6.12 LIQUIDATED DAMAGES – DEDUCTIONS FROM UNPAID BILLINGS –  
REMEDIES FOR NON-PERFORMANCE

6.12.1 If the Contractor fails to deliver and/or perform the services within the time specified in the contract, the actual damages to MST for the delay will be difficult to assess. In lieu of actual damages, the Contractor shall pay to MST, as fixed and agreed, liquidated damages for deficiencies outlined below.

- a. As described under Standard Terms and Conditions in Section Termination for Default/Breach, MST, may terminate this contract in whole or in part. In that event, the Contractor shall be liable for such liquidated damages accruing until such time as MST may reasonably obtain delivery or re-performance of similar deliverables and/or services. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor.
- b. Prior to the imposition of liquidated damages the Contractor shall meet with MST's Project Manager to review the contemplated implementation of a Liquidated Damage charge and deduction. The Contractor shall be provided with the opportunity to present any mitigating information/evidence to substantiate any claim that the deficiency in performance was beyond the control and/or without fault or negligence of the Contractor. The final authority to impose liquidated damages shall be the Project Manager.

6.12.2 Should an extension of time be granted the contractor, granting, or acceptance, of extensions of time to complete the work or furnish the labor, supplies, materials, or equipment, will not operate as a release to Contractor.

6.12.3 If Contractor believes that the action of MST, lack of action by MST, or any other reason, will result in or necessitate the revision of the contract, MST must be notified immediately. This will be considered the initial notice and shall be in writing. Such contract revisions might include, but are not limited to: the amount agreed upon for payment to Contractor; the period of time allowed for contract performance; the types of materials specified; or the scope of work or services required.

6.12.4 If within two working days of the immediate notification, the identified issue has not been resolved between MST and the Contractor, the Contractor shall provide a second written notice. At a minimum the written notice shall provide a description of the nature of the issue, the time, date, and location at which the problem was discovered, and the name of the MST representative to whom initial notice was given.

6.12.5 Within seven calendar days of the date of the initial written notice, the Contractor shall provide in writing the following information to MST:

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- a. The date of occurrence and the nature and circumstances of the issue for which the initial notice was given.
- b. Name, title, and activity of each MST representative knowledgeable of the issue.
- c. Identity of any documents and the substance of any oral communication related to the issue.
- d. The basis for an assertion that work required is a change from the original contract work or schedule.
- e. Identity of particular elements of contract performance for which additional compensation may be sought, including:
  - (1) Pay item(s) that has been or may be affected by the issue.
  - (2) Labor or materials, or both, that will be added, deleted, or wasted by the problem and what equipment will be idled or required.
  - (3) Delay and disruption in the manner and sequence of performance that has been or will be caused.
  - (4) Adjustments to contract price(s), delivery schedule(s), staging, and contract time estimated due to the issue.
  - (5) Estimate of the time within which MST must respond to the notice to minimize cost, delay, or disruption of the issue.
  - (6) The Contractor's written certification, under oath, attesting to the following:
    - (a) The request is made in good faith.
    - (b) Supporting data is accurate and complete to the contractor's best knowledge and belief.
    - (c) The amount requested accurately reflects the contractor's actual cost incurred.

6.12.6 The failure of the Contractor to comply with the requirement of this section constitutes a waiver of entitlement to additional compensation and/or time extension to complete work.

6.12.7 Within ten calendar days after the contractor's submission, MST will respond in writing to the Contractor to:

- a. Confirm that a proposed change request is necessary and, when necessary, give appropriate direction for further performance.
- b. Deny that the contract has been revised and, when necessary, direct the Contractor to proceed with the contract work.



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- c. Advise the Contractor that adequate information has not been submitted to decide whether/if paragraphs a. and b. above apply, and indicate the needed information and date it is to be received by MST for further review. MST will respond to such additional information within ten calendar days of receipt from the Contractor.

6.13. CHANGES BY CONTRACTOR

If the Contractor, on account of conditions developing during the performance of the Contract, finds it impracticable to comply strictly with the requirements of this contract, an application for modification of requirements must be made in writing. MST will respond in writing as to the acceptability of any Contractor-proposed changes.

6.14 CHANGES BY MST

- a. If requirements are identified which are not specified in this document, the Contractor shall, if ordered in writing by MST, perform such work at the Contractor's fair market prices.
- b. If requirements specified in the Contract are required to be omitted from the work, the Contractor shall, if ordered by MST, omit the performance of such work. A deduction shall be made from the amount to be paid to the Contractor in an amount that MST and Contractor shall determine and mutually agree to be the reasonable value of such work. It is understood, however, that the amount of work required by the Contract shall not, in accordance with the above provisions referring to additions and omissions, be increased or diminished to substantially alter the general character or extent of the Contract.

6.15. DAMAGES

All loss or damage arising from any unforeseen obstruction or difficulties, either natural or artificial, during the performance of this Contract, on the part of the Contractor or any agent or person employed by it, shall be sustained by the Contractor.

6.16. SELLING OR ASSIGNING

The Contractor shall not have the right to sell, assign, or transfer any obligations resulting from this bid without the specific written consent of MST.

6.17. INDEMNIFICATION

The Contractor shall indemnify, keep and save harmless all members of MST, its agents, officials, and employees, against all suits or claims that may be based on any injury to persons or property that may occur, or that may alleged to have occurred,

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in the course of the performance of this contract by the Contractor, whether or not it shall be claimed that the injury was caused through a negligent act or omission of the Contractor or its employees. The Contractor shall, at its own expense, defend any and all costs and other expenses arising from or incurred in connection to such. If any judgment shall be rendered against MST in any such action, the Contractor shall at its own expense satisfy and discharge the action.

6.18. COVENANT AGAINST GRATUITIES

Contractor shall not offer or provide gifts, favors, entertainment, or any other gratuities of monetary value to any official, employee, or agent of MST during the period of this Contract or for a period of one year after.

6.19. RIGHTS AND REMEDIES OF MST

The rights and remedies of MST provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

6.20. BINDING EFFECT

All of the terms, provisions and conditions of this Contract shall be binding upon the both parties and their respective successors, assigns, and legal representatives.

6.21. WAGE AND PRICE REGULATIONS

If the Federal Government should reinstate wage-price regulations, which are applicable to this Contract, the Contractor shall comply with the provisions of such laws and regulations.

6.22. DOCUMENTS DEEMED PART OF THE CONTRACT

6.22.1 The Contract includes a Contract signature sheet together with any Attachments and any Exhibits, all of which are incorporated into the contract and shall be construed together to form the contract between the two parties. Such documents include:

- a. Contract signed by both parties
- b. MST Specification #19-11, Construct Improvements – STC, consisting of:
  - (1) Specifications Manual and drawings
  - (2) Addenda, if any
  - (3) Scope of Work/Services
  - (4) Required Certifications/Forms
  - (5) Standard Terms and Condition
  - (6) General Terms and Conditions
  - (7) Signed bid, as submitted by Bidder

6.22.2 In the event of conflict between any of the above documents, the precedence for clarification shall be in the order listed.

## **SECTION 7 SPECIAL TERMS AND CONDITIONS**

### **7.1 FTA FUNDING REQUIREMENT**

- a. This project may be financed in part by the Federal Transit Administration. Accordingly, federal requirements apply to this Contract and if those requirements change then the changed requirements shall apply to the project as required. MST and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to MST, Contractor, or any other party pertaining to any matter resulting from the underlying contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- b. MST and the Contractor recognize that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies, " 49 CFR Part 31, apply to actions pertaining to this Contract. MST and the Contractor also agree to comply with the requirements of 49 U.S.C. 5323 (h) (2) by refraining from the use of any FTA assistance to support procurements using exclusionary or discriminatory specifications. MST also agrees to refrain from using state or local geographic restrictions unless otherwise allowed by FTA. Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### **7.2 BID SECURITY BONDING REQUIREMENTS**

**A bid guarantee from each bidder equivalent to five (5) percent of the bid price is required. The bid guarantees shall consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will, upon MST acceptance of the bid, execute such contractual documents as may be required within the time specified. See bond form in Section 8 FORMS and CERTIFICATIONS.**

### 7.3 PERFORMANCE BOND REQUIREMENTS

**A performance bond equal to 100% of the bid price is required. The performance bond serves to insure that the contractor will faithfully perform the covenants, conditions and agreements in the contract, and any changes made as therein provided. See Performance Bond Form in Section 8 FORMS and CERTIFICATIONS.**

### 7.4 FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulation, policies, procedures and directives, including without limitation those listed directly or by reference in the current Master Agreement (Form FTA MA (2) between MST and FTA, as amended. Contractor's failure to so comply shall constitute a breach of contract.

### 7.5 MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

The Contractor shall permit the authorized representatives of MST, the United States Department of Transportation and the Comptroller General of the United States to inspect, audit, make copies and transcriptions of all work, materials, payrolls and other data and records of the Contractor relating to its performance under the Contract. The Contractor shall maintain all such records for a period of three (3) years after MST makes final payment under this Contract.

### 7.6 DISADVANTAGED BUSINESS ENTERPRISES

7.6.1 The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of Contracts and subcontracts financed in whole or in part with federal funds provided under this Contract. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Bidder shall identify itself and its subcontractors as being certified DBE, if applicable. Bidder shall show good faith effort to include certified DBE participation on its construction team as evidenced in specific language the Bidder provides in Notices to potential subcontractors. Bidder shall provide copies of such Notices to MST upon demand.

7.6.2 If a specific DBE goal is assigned to this contract, it will clearly be stated below in 7.6.5 of this section. If the Contractor fails to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, MST may declare the Contractor non-compliant and in breach of contract. If a goal is not stated in the Special Provisions, it will be understood that NO specific goal is assigned to this contract.

7.6.3 A Disadvantaged Business Enterprise (DBE) means a small business

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concern which is at least 51% is owned by one or more socially and economically disadvantaged individuals, or, in the case of a publicly-owned business, at least 51% of the stock is owned by one or more socially and economically disadvantaged individuals. One or more of the socially and economically disadvantaged individuals who own it must control the management and daily business operations.

7.6.4 "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or Women; and any other minorities or individuals found to be disadvantaged by criteria as defined in Section 8(a) of the Small Business Act, as amended.

7.6.5 There is no DBE goal assigned to this contract.

## 7.7 TITLE VI COMPLIANCE

7.7.1 The Contractor shall comply with all requirements of the Civil Rights Act of 1964, as amended; the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as amended; and any implementing requirements of FTA. All of these requirements are incorporated by reference and made a part of this Contract. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

7.7.2 The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, disability, age, national origin, ancestry, marital status, pregnancy, medical condition, or sexual orientation. The Contractor shall take affirmative action to insure that applicants are employed, and the employees are treated during their employment, without regard to their race, color, religion, gender, disability, age, national origin, ancestry, marital status, pregnancy, medical condition, or sexual orientation. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor shall comply with any implementing regulations FTA may issue.

7.7.3 In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. 12112, the Contractor agrees that it will comply with the requirements of U.S. Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630. These requirements pertain to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

## 7.8 ENERGY CONSERVATION REQUIREMENTS

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## 7.9 ENVIRONMENTAL REQUIREMENTS

7.9.1 The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to MST and understands and agrees that MST will report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$25,000 financed in whole or in part with Federal assistance provided by FTA.

7.9.2 The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended 42 U.S.C. 7401 et seq. The Contractor agrees to report each violation to MST and understands and agrees that MST will report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$25,000 financed in whole or in part with Federal assistance provided by FTA.

## 7.10 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

The Contractor shall submit with bid, documentation showing that neither the Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. For this purpose, the Contractor must complete and Execute the form entitled "Certification Regarding Debarment, Suspension, and Other Responsibility Matters," found in SECTION 8 FORMS. Contractor also agrees to include this provision in any subcontract exceeding \$25,000 and forward the certification to MST with the bid.

## 7.11 NON-COLLUSION AFFIDAVIT

Bidder will be required to submit with their bid a Non-Collusion Affidavit.

## 7.12 PENALTY FOR COLLUSION

If it is found that the person, firm or corporation to whom a Contract has been awarded has colluded with any other party or parties, then the Contract shall be null and void and the Contractor shall be liable to MST for all loss or damage which MST may suffer. MST may advertise for a new Contract for required services.

### 7.13 RESTRICTIONS ON LOBBYING

7.13.1 Contractors who apply or propose for an award of \$25,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer of employee of MST, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to MST.

7.13.2 Each bidder is required to review the above referenced regulations and complete and submit a Certification of Compliance with Federal Lobbying Regulations.

7.13.3 Pursuant to federal regulations, the bidder is required to have all subcontractors (at any tier) providing more than \$25,000 towards the Contract also complete with this Certification, to be included with the bid.

### 7.14 BUY AMERICA CERTIFICATION (not applicable for professional services contract)

7.14.1 In accordance with Section 165 of the Surface Transportation Assistance Act of 1982, P.L. 97-424, January 6, 1983, and its implementing regulations at 49 CFR Part 661, certain Federal funds may not be obligated for mass transportation projects unless steel, iron, and manufactured products used in such projects are produced in the United States. There are four exceptions to this basic requirement: (1) if its application is not in the public interest; (2) if materials and products being procured are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; (3) in the case of the procurement of rolling stock, if the cost of components which are produced in the United States is more than 60% of the cost of all components, and if final assembly takes place in the United States; or (4) if the inclusion of domestic material will increase the cost of the overall project Contract by more than 25%.

7.14.2 For a bid to be considered complete, each bidder must fill out and execute the portion of the Buy America Certificate that is applicable to it and submit the certificate located in Section 8 FORMS and CERTIFICATIONS of the IFB. On the certificate, each bidder will indicate whether it can comply with the general requirements or whether it may qualify for one of the specified exceptions. In the latter event, MST, on behalf of the bidder, will tender the request for exception(s) to FTA for review and approval. Bidders are advised to review the specific Buy America requirements contained in the requirements at 49 CFR Part 661.

## 7.15 TERMINATION

### 7.15.1 Termination for Convenience

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

### 7.15.2. Termination for Default/Breach

If the Contractor fails to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, MST may terminate this contract for default. MST shall terminate by delivering to the Contractor a Notice of Termination specifying the default. The Contractor will only be paid the contract price for work services delivered and accepted, or services performed in accordance with the manner or performance required in this Contract.

### 7.15.3 Termination for Force Majeure

MST may terminate this Contract upon written notice from the Contractor for unforeseen causes beyond the control and without the fault or negligence of the Contractor. Such causes are those of acts of God, acts of the public enemy, governmental acts, fires and epidemics whose causes irrecoverably disrupt or render impossible the Contractor's performance. An "act of God" shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the Contractor to foresee or make preparation in defense against.

### 7.15.4 Opportunity to Cure

MST, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor within ten (10) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to MST's satisfaction the breach or default, within ten (10) calendar days after receipt by Contractor of written notice from MST, MST shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude MST from also pursuing all available remedies against Contractor and its sureties for said breach or default.



#### 7.15.5 Waiver of Remedies for any Breach

In the event that MST, elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by MST shall not limit MST's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

#### 7.16 DISPUTE RESOLUTION

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the MST General Manager/CEO. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

Unless otherwise directed by MST, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

#### 7.17. PROTEST PROCEDURES

Failure to comply with any of the requirements contained herein may result in rejection of any protest.

##### 7.17.1 General Procedures

- a. Any bidder or Contractor whose direct economic interest would be affected by the award of the Contract or the failure to award the Contract may file a protest, claim or dispute with MST pursuant to these protest procedures prior to filing any protest, claim or dispute with the FTA.
- b. Claims or disputes, where applicable, shall be in writing and filed with MST directed to the General Manager/CEO, 19 Upper Ragsdale Drive, Monterey, CA 93940.

##### 7.17.2 Protest Before Bid Opening

Protests shall be submitted in writing prior to the opening of bids, unless the aggrieved person did not know and could not have known of the facts giving rise to such protest prior to the opening.

In that case, the protest shall be submitted within five (5) calendar days after such aggrieved person knows or should have known of the facts giving rise to the protest. The protest shall clearly identify:

- a. The name, address, and telephone number of the protester.
- b. The grounds for the protest, any and all documentation to support the protest and the relief sought.
- c. Steps that have been taken to date in an attempt to correct the alleged problem or concern.

#### 7.17.3 Protest After Contract Award

- a. Any individual or entity may file a protest with MST alleging a violation of applicable federal, state law and/or MST policy or procedure relative to seeking, evaluating and/or intent to award a procurement Contract. In addition, any individual or entity may file a protest with MST alleging that MST has failed to follow its Procurement Protest Procedures. Such protest must be filed no later than five (5) calendar days from the notice of intent to award or non-award of the procurement Contract.
- b. A protest, dispute, or claim with respect to the award of a Contract through solicitation of bids shall be submitted in writing within five (5) days of notification of such award to the General Manager/CEO for a decision. All claims shall clearly identify:
  - (1) The name, address, and telephone number of the protester.
  - (2) The grounds for the protest, any and all documentation to support the protest and the relief sought.
  - (3) Steps that have been taken to date in an attempt to correct the alleged problem or concern.
- c. A written decision by the MST General Manager/CEO stating the grounds for allowing or denying the protest will be mailed to the protestor prior to execution of the Contract. Such decision shall be final unless the Board of Directors accepts an appeal of the General Manager/CEO's decision.

#### 7.17.4 FTA Protest Procedures

FTA will only review protests regarding the alleged failure of MST to have written protest procedures, or the alleged failure to follow such procedures. An alleged violation on other grounds falls under the jurisdiction of the appropriate State or local administrative or judicial authorities. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with the Federal regulation. FTA will only review protest submitted by an intercede party as defined in FTA 4220.1E. FTA's decision on any appeal will be final.

**SECTION 8 FORMS CERTIFICATIONS**

8.1 The following FTA and MST forms/certifications are to be executed by each Bidder and enclosed with the bid. Bids received without these forms/certifications completed will not be considered.

8.2 Questions regarding forms and/ or certifications may be addressed by mail, telephone or email to:

Purchasing Manager  
Monterey-Salinas Transit  
19 Upper Ragsdale Drive, Suite 200  
Monterey, California 93940

Telephone (831) 264-5884  
Email: samorim@mst.org

8.3 The person signing the certification shall state his address and official capacity.

8.4 To be considered responsive, the following forms, certificates and/or statements must be completed and submitted on or before the IFB deadline. Compliance with these requirements is mandatory for contract award.

- a. Application for DBE and/or California Unified Certification DBE status Certification (if applicable)
- b. Certificate of Primary Contractor Regarding Debarment
- c. Lobbying Certificate
- d. Buy America Certificate
- e. Subcontractors List
- f. MST Bidders/Bidders List form
- g. Non-Collusion Certificate
- h. Bid security Bond Form
- i. Performance Security Bond Form
- j. Bidder's Statement Regarding Insurance Coverage
- k. Worker's Compensation Insurance Certificate

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- I. Bidder information sheet(s)
- m. All-Purpose Acknowledgement Statement
- n. Certificate of Compliance
- o. Sample Contract (SECTION 9) Contract is not for signature - Bidder to provide written exception(s) to any of the terms and/or conditions of sample contract and return with bid submittal.
- p. Registered with the Department of Industrial Relations (Provide DIR number and confirm registration is active)

8.5 Failure to complete, sign (where required), and return the above bid documents with your bid may render it non-responsive.

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If vendor desires to qualify for Disadvantage Business Enterprise (DBE) status the web address for California Unified Certification Program (UCP) is: <http://www.dot.ca.gov/hq/bep/ucp.htm> If you are a DBE please provide a copy of your UCP certificate.

AFFIDAVIT FOR DISADVANTAGED BUSINESS ENTERPRISE

STATE OF \_\_\_\_\_:

COUNTY (CITY) OF \_\_\_\_\_:

I HEREBY DECLARE AND AFFIRM THAT I AM THE \_\_\_\_\_ (Title) and duly authorized representative of \_\_\_\_\_ (name of corporation/firm) whose address is \_\_\_\_\_. I hereby declare and affirm that my firm is a certified Disadvantaged Business Enterprise or Women-Owned Business Enterprise as defined and approved by California Unified Certification Program. The above, named firm will provide MST with a copy of the document from the California Unified Certification Program so affirming their DBE status.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

\_\_\_\_\_(AFFIANT)\_\_\_\_\_ (DATE)

STATE OF \_\_\_\_\_:

COUNTY (CITY) OF \_\_\_\_\_:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

**CERTIFICATION OF PRIMARY CONTRACTOR REGARDING DEBARMENT,  
SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The Primary Contractor, \_\_\_\_\_, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offense enumerated in paragraph (2) of this certification; and
4. Have not within a three (3) year period preceding this application/proposal had one (1) or more public transactions (Federal, State, or Local) terminated for cause or default.

If the above named Primary Contractor is unable to certify to any of the the statements in this certification, the Primary Contractor shall attach an explanation to this certification.

The Primary Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provision of 31 U.S.C. Section 3801 et seq. are applicable thereto.

\_\_\_\_\_  
***Signature and Title of Authorized Official***

\_\_\_\_\_  
***Notary Public Name (Printed)***

\_\_\_\_\_  
***Notary Public Signature***

\_\_\_\_\_  
***County of***

\_\_\_\_\_  
***Expiration Date***

**CERTIFICATION OF RESTRICTIONS ON LOBBYING**

I, \_\_\_\_\_, \_\_\_\_\_, hereby certify on  
**(Name)** **(Title)**

behalf of \_\_\_\_\_ that:  
**(Firm)**

- (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) 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.

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

Dated \_\_\_\_\_  
**(Name)**  
**(Title)**  
**(Firm)**

**BUY AMERICA CERTIFICATE (Steel or Manufactured Products)**

A Buy America Certificate, shown below, must be completed and submitted with the bid. A bid which does not include the certificate will be considered non-responsive.

If steel or manufactured products (as defined in 49 CFR §661.3 and §661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder.

SELECT AND COMPLETE **ONLY ONE** CERTIFICATE BELOW

**Certificate of Compliance with Section 165(a)**

The Bidder hereby certifies that it will comply with the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations in 49 CFR Part 661.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name

Title \_\_\_\_\_

**Certificate for Non-Compliance with Section 165(a)**

The Bidder hereby certifies that it cannot comply with the requirements of Section 165(a) of the Surface Transportation Act of 1982, as amended, but it may qualify for an exception to the requirement pursuant to Section 165(b) (2) or (b) (4) of the Surface Transportation Assistance Act of 1982 and regulations in 49 CFR part 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name

Title \_\_\_\_\_



## SUBCONTRACTORS LIST

The following is a list of the subcontractors that will be used in the work/services if the Proposer is awarded the contract, and no subcontractor not listed below will be used without the written approval of MST. Additional numbered pages outlining this portion of the Proposal may be attached to this page. NOTE: Subcontractors' address, telephone number, license numbers, class and expiration date information may be omitted from this form but must then be submitted within two (2) working days following the opening of Proposals. Subcontractor name, location, and item of work must be stated at the time of the Proposal.

\_\_\_\_\_  
 Proposer Name

SUBCONTRACTORS LIST, Page 1		
All Subcontractors in excess of \$25,000 participation in the bid.		
SUBCONTRACTOR:	ITEM OF WORK:	
LOCATION/ADDRESS:		
LICENSE NO. CLASS:	EXPIRATION DATE: / /	PHONE: ( )
SUBCONTRACTOR:	ITEM OF WORK:	
LOCATION/ADDRESS:		
LICENSE NO. CLASS:	EXPIRATION DATE: / /	PHONE: ( )
SUBCONTRACTOR:	ITEM OF WORK:	
LOCATION/ADDRESS:		
LICENSE NO. CLASS:	EXPIRATION DATE: / /	PHONE: ( )
SUBCONTRACTOR:	ITEM OF WORK:	
LOCATION/ADDRESS:		
LICENSE NO. CLASS:	EXPIRATION DATE: / /	PHONE: ( )

**Monterey-Salinas Transit**  
**BIDDERS/BIDDERS LIST**

All bidders/bidders are required to provide the following information for all DBE and non-DBE contractors, who provided a bid, bid or quote. This information is also required from the proposed prime contractor, and must be submitted with their bid/bid. Monterey-Salinas Transit (MST) will use this information to maintain and update a “Bidders/Bidders” List to assist in the overall annual goal DBE goal setting process. *To the extent permitted by law, all information submitted will be held in strict confidence and will not be shared without your consent.*

**Firm Name** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_ **No. of Yrs. In Business** \_\_\_\_\_

**Is the firm currently certified as a DBE by California Unified Certification Program?**

**No**                       **Yes**      **Certification #** \_\_\_\_\_

**Type of work/services/materials provided by firm?** \_\_\_\_\_

**What were your firm’s Gross Annual receipts for last year?**

- Less than \$1 million**
- Less than \$5 million**
- Less than \$10 million**
- Less than \$15 million**
- More than \$15 million**

This form can be duplicated if necessary to report all bidders (DBEs and non-DBEs) information.

NON-COLLUSION AFFIDAVIT

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn, deposes  
and

says that he or she is \_\_\_\_\_  
of (position or title)

\_\_\_\_\_  
(the Contractor)

the party making the foregoing contract that the contract price is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the Contractor, and has not directly or indirectly colluded, conspired, connived, or agreed with any Contractor or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the Contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Contractor or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Contractor, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the Contractor has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Dated: \_\_\_\_\_ By: \_\_\_\_\_

**BID SECURITY BOND**  
**To Be Completed and Submitted With Proposal**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT \_\_\_\_\_ hereinafter called Principal, and  
(Contractor)

\_\_\_\_\_ hereinafter called Surety,  
are  
(Surety)

jointly and severally held and firmly bound unto Monterey-Salinas Transit, Monterey, California, hereinafter called MST, in the penal sum of \_\_\_\_\_ U.S. Dollars (equal to five percent (5%) of the submitted bid price), for the payment whereof unto MST, Principal and Surety jointly and severally bind themselves forever firmly by these presents.

WHEREAS, Principal is herewith submitting a Bid:

**Bid No. 19-11 “Construct Improvements – STC”**

NOW, THEREFORE, the condition of this obligation is such that if Principal is awarded a contract for the work, and if Principal within that time specified in the Proposal enters into, executes and delivers to MST a contract in the form provided herewith, and if Principal within the time specified in the Proposal gives to MST evidence of required liability and worker's compensation insurance, as described in the bid documents, then this obligation shall be void.

If, however, Principal shall fail or refuse to furnish, execute contract, and deliver to MST said evidence of required liability and worker's compensation insurance as described in Attachment “A” in the time stated in the Proposal, then Principal and Surety shall forfeit to MST the penal sum hereof.

AND IT IS HEREBY DECLARED AND AGREED that Surety shall be liable under this obligation as Principal, and that nothing of any kind or nature whatsoever that will not discharge Principal shall operate as a discharge or a release of liability of Surety.

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IT IS HEREBY FURTHER DECLARED AND AGREED that this obligation shall be binding upon and inure to the benefit of Principal, Surety and MST and their respective heirs, executors, administrators, successors and assigns.

SIGNED AND SEALED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
Name of Principal

\_\_\_\_\_  
Signature of Principal's Authorized Representative

\_\_\_\_\_  
Name and Title of Signer

*(Seal and signature of Notary Public)*  
*(Attach notary acknowledgment of Surety)*

## PERFORMANCE BOND

### To Be Completed and Submitted With Awarded Contract

KNOW ALL PERSONS BY THESE PRESENTS:

THAT \_\_\_\_\_ hereinafter called Principal, and  
(Contractor)

\_\_\_\_\_ hereinafter called Surety,  
are  
(Surety)

jointly and severally held and firmly bound unto Monterey-Salinas Transit, Monterey, California, hereinafter called MST, in the penal sum of

\_\_\_\_\_ U.S. Dollars (equal to 100% percent (100%) of the submitted bid price), for the payment whereof unto MST, Principal and Surety jointly and severally bind themselves forever firmly by these presents.

WHEREAS, Principal is herewith submitting a Bid:

#### **Bid No. 19-11 “Construct Improvements – STC”**

WHEREAS, Principal is required under the terms of the contract to furnish a bond for the faithful performance of the contract,

NOW, THEREFORE, the condition of this obligation is such that if Principal shall faithfully perform the covenants, conditions and agreements in the contract, and any changes made as therein provided. and shall indemnify and save harmless MST, its officers and agents as therein stipulated, then this obligation shall become null and void; otherwise, it shall remain in full force and virtue, and Principal and Surety, in the event suit is brought on this bond, will pay to MST such reasonable attorney's fees as shall be fixed by the court.

And Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work/services to be performed hereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work/services and specifications.

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CONSTRUCT IMPROVEMENTS – SALINAS TRANSIT CENTER

IT IS HEREBY FURTHER DECLARED AND AGREED that this obligation shall be binding upon and inure to the benefit of Principal, Surety and MST and their respective heirs, executors, administrators, successors and assigns.

SIGNED AND SEALED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
Name of Principal

\_\_\_\_\_  
Signature of Principal's Authorized Representative

\_\_\_\_\_  
Name and Title of Signer

*(Seal and signature of Notary Public)*  
*(Attach notary acknowledgment of Surety)*

**BIDDER'S STATEMENT  
REGARDING INSURANCE COVERAGE  
To Be Submitted With Bid**

BIDDER HEREBY CERTIFIES that the Bidder has reviewed and understands the insurance coverage requirements specified in the Invitation for Bid **No. 19-11 “Construct Improvements – STC”**. Should the Bidder be awarded the contract for the work, Bidder further certifies that the Bidder can meet the specified requirements for insurance, including insurance coverage of the subcontractors, and agrees to name MST as Additional Insured for the work specified.

\_\_\_\_\_  
Name of Bidder (Person, Firm, or Corporation)

\_\_\_\_\_  
Signature of Bidder's Authorized Representative

\_\_\_\_\_  
Name & Title of Authorized Representative

\_\_\_\_\_  
Date of Signing



**WORKER'S COMPENSATION INSURANCE CERTIFICATE**

The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker's 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.

\_\_\_\_\_  
Name of Bidder (Person, Firm, or Corporation)

\_\_\_\_\_  
Signature of Bidder's Authorized Representative

\_\_\_\_\_  
Name & Title of Authorized Representative

\_\_\_\_\_  
Date of Signing

**BIDDER INFORMATION, QUALIFICATIONS AND EXPERIENCE**

The BIDDER is required to state what work of similar magnitude or character they have done. Give references to enable MST to judge experience, skill and business standing and provide information to assess the ability to perform the services as completely and as rapidly as is required under the terms of the contract. All questions must be answered and the data given must be clear and comprehensive. Provide the nature of the work performed, for whom, amount of contract, dates of work, and the name of a point of contact, architect, engineer, or other supervising person for Transit Agency, Firm or other Public Agency. If necessary, questions may be answered on separate attached sheets.

**A. GENERAL BIDDER INFORMATION:**

When organized? \_\_\_\_\_

If a Corporation, where incorporated? \_\_\_\_\_

Provide Dun and Bradstreet Number and rating. \_\_\_\_\_

How many years in business under your current firm or trade name? \_\_\_\_\_

Has the firm ever defaulted on a contract? \_\_\_\_\_ If so, where and why?

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

How was it resolved? \_\_\_\_\_

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

Has there ever been a failure to complete any work? \_\_\_\_\_ If so, where and why?

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

How was it resolved?

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

**BIDDER INFORMATION, QUALIFICATIONS AND EXPERIENCE (CONTINUED)**

Any claims for labor code violations? \_\_\_\_\_

**B. List three (3) current projects to include the, contract value, scheduled completion date, and the contact person and telephone number.**

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**C. List three (3) similar work experiences to this contract requirement. Provide contract value, date completed, and a contact name and phone number.**

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**D. Is there any legal action pending pertinent to this contract work? \_\_\_\_\_  
If yes, please explain:**

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**E. The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any credit history and financial condition or other information required by MST in verification of the information provided in this statement of BIDDERS qualifications. I hereby certify that the above information is true and correct to the best of my knowledge and that MST may rely on the information provided.**

THIS STATEMENT MUST BE NOTARIZED.

Attach the "California All-Purpose Acknowledgement" duly notarized. See following page

NAME OF CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_  
Signature                      Title

\_\_\_\_\_  
Type/Print Name Date:

**ALL-PURPOSE ACKNOWLEDGEMENT**

State of \_\_\_\_\_ (County of \_\_\_\_\_)  
*Name of State* *Name of County*

On \_\_\_\_\_ before me, \_\_\_\_\_,  
*Date* *Name and Title of Officer (i.e., Your Name, Notary Public)*

personally appeared \_\_\_\_\_  
*Name(s) of Document Signer(s)*

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(es) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
*Signature of Notary*

**(Affix seal in the above blank space)**

**COMPLIANCE OR EXCEPTION TO THE TERMS AND CONDITIONS OF THE IFB**

**A. COMPLIANCE:**

This is to certify that Bidder agrees and shall comply with the terms and conditions of the IFB.

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

Bidder  
Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_

**B. EXCEPTION:**

This is to certify that Bidder takes exception to the following terms and conditions of the IFB. Bidder must identify and list the terms and conditions by Section number, page number and title. Bidder must identify what its exception is.

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

Bidder  
Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_

Bidder shall list and attach to this form bidder's exception(s):

**BID FORM**  
**SALINAS TRANSIT CENTER IMPROVEMENTS**

The work to be done and referred to herein is in Monterey County, State of California, and shall be constructed in accordance with the Plans, Specifications (including the payment of not less than the wages rates set forth therein) and the Contract annexed hereto. The work to be done is shown upon project documents entitled: Specifications Manual for Salinas Transit Center Improvements, all drawings and any addenda.

The undersigned bidder agrees to furnish the required bonds or other security and to enter into a contract within the time specified in the Instructions to Bidders, and further agrees to complete all work covered by the bid, in accordance with all requirements of the contract.

The amount of the bid for comparison purposes will be the total of all items. Prices bid shall include overhead, profit and all applicable taxes. By submission of this bid, each bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that this bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this bid with any other bidder or with any competitor.

Accompanying this bid is: Circle one: Bidder's Bond -- Cashier's Check -- Certified Check – Cash for \$ \_\_\_\_\_, an amount equal to ten percent (10%) of the total bid.

BID TO: MONTEREY-SALINAS TRANSIT  
ATTN: Purchasing Manager  
19 Upper Ragsdale Drive, Suite 200  
Monterey, Ca 93940

BID FROM: \_\_\_\_\_  
(Name of Firm Submitting Bid)

\_\_\_\_\_

(Address)

\_\_\_\_\_

(City) (State) (Zip Code)

\_\_\_\_\_

(Telephone/Fax Numbers)

\_\_\_\_\_

(Date Submitted)

**Total Bid Price:** \_\_\_\_\_

All portions of this Bid Form must be completed, signed, and submitted with the Bid. Failure to do so may result in Bid being rejected as non-responsive.

Certification

\_\_\_\_\_  
(Contractor's License Number/Classification)

\_\_\_\_\_  
(Expiration Date)

Authentication

\_\_\_\_\_  
(Printed Name of Person Submitting Bid)

\_\_\_\_\_  
(Title of Person Submitting Bid)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

## SECTION 9 SAMPLE CONTRACT

Following is a draft contract, which, once executed, becomes an agreement between Contractor selected and MST. This sample serves as a draft document and basis for finalizing agreements between the two parties.

**SAMPLE CONTRACT**  
**Monterey-Salinas Transit**  
**Construct Improvements – STC**  
**MST Specification Number 19-11**

THIS CONTRACT is made by and between Monterey-Salinas Transit District, hereinafter called "MST", and \_\_\_\_\_, herein after called "CONTRACTOR". For reference purposes, the effective date of this Contract is on date of executed Contract.

MST has caused specifications, and other contract documents, hereinafter referred to as "Specifications", to be prepared for certain work on the referenced project; and this will include, the IFB # 19-11 and its salient sections as listed below:

### INTRODUCTION:

#### 1 General Information

Monterey-Salinas Transit (MST) has accepted bids from companies interested in constructing facility and aesthetic improvements at the Salinas Transit Center, 110 Salinas Street, Salinas, California.

The Contractor has been awarded an exclusive contract to provide the aforementioned services for the period beginning \_\_\_\_\_, 2019 through \_\_\_\_\_, 2019.

#### 2 INTRODUCTION TO SCOPE OF WORK/SERVICES:

2.1 The purpose of the Section below is to highlight the general requirements that are covered in the Specifications and to identify related tasks that are beyond the scope of this project.

#### 2.2 CONTRACTOR REQUIREMENTS

The qualified contractor will provide construction services and procure equipment to deliver the following general improvements:

- Construct new addition including demo inside the existing building. Includes doors, windows, flooring and etc. All other Demo excluded- Done by others.



- Install all new Site Work Requirements (for new addition) including landscaping, flat concrete, slab, underground and pavers. Portland Loo will be supplied by MST but installed by Contractor.
- All electrical and plumbing requirements for the addition. Security and camera systems excluded- Done by others.
- All paint for exterior and interior of the new addition.
- Purchase and install all restroom equipment such as paper towel dispenser and etc. (As per MST Specifications)
- Install new HVAC Requirements for the new addition and including the Customer Service Area. Demo the existing non-used HVAC Equipment.

### **2.3 WORK TO BE PERFORMED BY OTHERS**

The following related tasks are not within the scope of this project and will be performed by others

- Securing permits from the City of Salinas.
- Demo of existing restrooms, trellis and flat concrete for the new addition.
- Installation and connection of security cameras and supporting hardware including signage.
- Furnishing any furniture or window coverings.
- Landscaping maintenance after placement of new landscaping and irrigation.
- Corrections to any fire code conditions.
- Painting of curbs in the bus travel way and in the public right of way.
- Exterior and interior painting -excluding new addition requirements.

- Removal of decorative tile on exterior of building and subsequent repair of wall surfaces beneath.
- Upgrades to existing Customer Service Area (Only related items as per the new addition.

## 2.4 TECHNICAL SPECIFICATIONS

Technical specifications are included in a separate document prepared by The Paul Davis Partnership, and entitled **Specifications Manual for Salinas Transit Center Improvements**. The most recent version is dated November 9, 2018 and is the document to be used as the basis for developing the lump sum bid amount. The specifications section is self-contained with its own table of contents and page enumeration. Other documents included are, Architectural, Civil, Structural, Mechanical, Electrical, Landscape, Portland Loo, and the Geotechnical report. These documents comprise the entire bid package.

## 3. PROJECT SCHEDULE

The schedule for this project is as follows:

Award of Contract	March 11, 2019
Notice to Proceed	March 11, 2019
Estimated construction completion	December 2019

## 4. COMPONENT PARTS

This Contract shall consist of the following documents, each of which is on file with MST, and is incorporated into and made a part of this Contract by reference:

- A. This Contract
- B. Invitation for Bid No. 19-11 and Addenda, if any
- C. Contractor's bid
- D. Specifications Manual for Salinas Transit Center Improvements
- E. Architectural, Civil, Structural, Mechanical, Electrical, Landscape, Portland Loo, and the Geotechnical report.

## 5. PERIOD OF PERFORMANCE

Services under this Contract shall for the period beginning \_\_\_\_\_, 2019 through \_\_\_\_\_, 2019. Contractor shall not be held liable for delays resulting from problems of scheduling on the part of MST.

**6. CONTRACT PRICE**

MST agrees to pay the Contractor \_\_\_\_\_ dollars (\$XXXX) in accordance with their response to IFB #19-11 for services performed in accordance with this Contract. MST agrees to pay the Contractor an additional fee of \_\_\_\_\_ dollars (\$XXXX) if optional work is authorized.

**7. INVOICES**

7.1 PAYMENT PROCEDURES: All payments to Contractor for services rendered shall be paid in arrears, after the service has been provided. Contractor shall invoice MST upon completion of each milestone as listed in Exhibit four (4). MST shall reimburse Contractor within fourteen (14) calendar days of receipt of all Contractor invoices. The submission of incomplete or inaccurate invoices by Contractor may delay payments to Contractor. Acceptance of invoice(s) is within MST sole discretion.

7.2 In the event MST disputes any amount on Contractor's invoice, MST shall provide written notice of the disputed amount and shall with hold the amount from the payment of the invoice but shall pay the undisputed amount on a timely basis. MST and Contractor shall then meet to resolve any disputed amounts.

7.3 Invoices shall be mailed to the appropriate transit agency:

7.3.1 Monterey-Salinas Transit  
19 Upper Ragsdale Drive- Suite 200  
Monterey, CA 93940  
ATTN: Accounts Payable

7.3.2 MST shall mail payments to:

Contractor

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

ATTN: Accounts Receivable

**8. COST REPORTING**

The Contractor shall notify MST's Project Manager in writing whenever it has reason to believe that the total allocable costs have reached 75% of the of the

total contract budgeted amount. Additionally, the Contractor shall notify MST immediately if the projected costs of performance of additional requested tasks would cause the budgeted contract amount to be exceeded. The Contractor is not authorized to exceed the budgeted contract amount unless or until a contract modification has been issued, which increases the price.

## **9. NOTICE**

Any notice or correspondence required or permitted to be given under this Contract shall be deemed given when personally delivered to recipient thereof or mailed by registered or certified mail, return receipt requested, postage prepaid, to the appropriate recipient thereof. In the case of the Contractor, at \_\_\_\_\_ . In the case of MST, at 19 Upper Ragsdale Drive-Suite 200, Monterey CA 93940, or any other address which either party may subsequently designate in writing to the other party.

## **10. INSURANCE**

### **10.1 General:**

Contractor, at its sole cost and expense, for the full term of this Contract (and any extensions thereof), shall obtain and maintain at minimum all of the following insurance coverage. Such insurance coverage shall be primary coverage as respects MST and any insurance or self-insurance maintained by MST shall be excess of Contractor's insurance coverage and shall not contribute to it.

### **10.2 Types of Insurance and Minimum Limits**

Contractor shall obtain and maintain during the term of this Contract:

(a) Worker's Compensation and Employer's Liability Insurance in conformance with the laws of the State of California (not required for Contractor's or subcontractors having no employees) with limits of not less than one million dollars (\$1,000,000) per occurrence.

(b) Contractor's vehicles used in the performance of this Contract, including owned, non-owned (e.g. owned by Contractor's employees), leased or hired vehicles, shall each be covered with Commercial Automobile, Liability Insurance in the minimum amount of one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.

(c) Contractor shall obtain and maintain Comprehensive General Liability Insurance coverage in the minimum amount of one million dollars (\$1,000,000) combined single limit, including bodily injury, personal injury, and property damage.

### 10.3 Other Insurance Provisions

- (a) As to all insurance coverage required herein, any deductible or self-insured retention exceeding \$5,000.00 shall be disclosed to and be subject to written approval by MST.
- (b) If any insurance coverage required hereunder is provided on a "claims made" rather than "occurrence" form, Contractor shall maintain such insurance coverage for five (5) years after expiration of the term (and any extensions) of this Contract.
- (c) All required Automobile Liability Insurance and Comprehensive or Commercial General Liability Insurance shall contain the following endorsement as a part of each policy: "MST is hereby added as an additional insured as respects the operations of the named insured."
- (d) All the insurance required herein shall contain the following clause: "It is agreed that this insurance shall not be canceled until thirty (30) days after MST shall have been given written notice of such cancellation or reduction."
- (e) Contractor shall notify MST in writing at least thirty (30) days in advance of any reduction in any insurance policy required under this Contract.
- (f) Contractor agrees to provide MST at or before the effective date of this Contract with a certificate of insurance of the coverage required.
- (g) If Contractor, for any reason, fails to maintain insurance coverage, which is required pursuant to this CONTRACT, the same shall be deemed a material breach of contract. MST, at its sole option, may terminate this CONTRACT and obtain damages from the Contractor resulting from said breach. Alternatively, MST may purchase such required insurance coverage, and without further notice to Contractor, MST may deduct the cost therefore from Contractor's invoices charges for services rendered.

**11. INDEMNIFICATION**

Contractor hereby agrees to indemnify, defend, and hold MST and its officers, agents, employees and assigns harmless from any liability, whether arising during or after completion of work hereunder, or in any manner directly caused, occasioned, or claimed to be caused, in whole or in part, by reason of any act or omission related of Contractor, or of anyone acting under Contractor's direction or control or on its behalf, in connection with the performance of this Contract.

This indemnity and hold harmless provision, insofar as it may be adjudged to be against public policy, shall be void and unenforceable only to the minimum extent necessary so that the remaining terms of this indemnity and hold harmless provision may be within public policy and enforceable.

**12. NON-DISCRIMINATION ASSURANCE**

Contractor shall not discriminate on the basis of race, creed, color, national origin, gender, or sexual orientation or in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as MST deems appropriate. Contractor shall obtain the same assurances from its joint venture partners, and sub Contractors by including this assurance in all subcontracts entered into under this Contract.

**13. GOVERNING LAW**

This Contract shall be in accordance with the laws of the State of California. Parties further stipulate that this Contract was entered into in the State of California and the state is the only appropriate forum for any litigation as a result of breach of contract. Venue shall be within the County of Monterey, California.

**14. TERMINATION**

This contract may be terminated for a number of reasons as discussed below:

- 14.1 Termination for Convenience. MST may terminate this contract, in whole or in part, at any time by written notice to Contractor when it is in MST's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to MST.

- 14.2 Termination for Default, Breach or Cause. If the Contractor does not deliver supplies, materials or services in accordance with the scope of work, or if the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, MST may terminate this contract for default. Termination shall be effected by serving a notice of termination to the Contractor setting forth the manner in which the Contractor is in default.

The Contractor will only be paid the contract price for supplies, materials and services delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by MST that the Contractor had an excusable reason for not performing, such as a strike, fire, flood, or events which are not the fault of or are beyond the control of the Contractor, MST, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or may treat the termination as a termination for convenience.

If the termination is for default, MST may fix the fee to be paid the Contractor in proportion to the value of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to MST and the parties shall negotiate the termination settlement to be paid the Contractor.

- 14.3 Opportunity to Cure. MST, shall, in the case of a termination for breach or default, allow the Contractor up to five (5) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to furnish or remedy to MST's satisfaction, the breach or default or any of the terms or conditions of this Contract within five (5) calendar days after receipt by Contractor or written notice from MST setting forth the nature of said breach or default, MST shall have the right to terminate the Contract without any further obligation to Contractor.

Any such termination for default shall not in any way preclude MST from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- 14.4 Waiver of Remedies for any Breach. In the event that MST elects to waive its remedies for any breach by Contractor of any term or condition of this Contract; such waiver by MST shall not limit MST's remedies for any succeeding breach of that or of any other terms or conditions of this Contract.

Upon receipt of any notice from MST to cancel and/or terminate work under this contract, the Contractor shall:

Immediately discontinue all services affected, unless the notice directs otherwise.

If the termination is for the convenience of MST, MST will make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, MST may complete the work required by the contract or otherwise arrange for its completion and the Contractor shall be liable for any reasonable additional cost incurred by MST.

## **15. DISPUTE RESOLUTION**

Disputes arising in the performance of this contract, which are not resolved by agreement of the parties, shall be decided in writing by the MST General Manager/CEO. This decision shall be final and conclusive unless within fourteen (14) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the MST General Manager/CEO.

In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard by the MST Board of Directors and to offer evidence in support of its position. The decision of the MST Board of Directors shall be binding upon the Contractor and the Contractor shall abide by the decision.

## **16. LITIGATION**

In the event of any dispute that results in litigation or arbitration arising from or related to the services provided under this Contract, the prevailing party will be entitled to recovery of all reasonable costs incurred, including that party's time, court costs, attorney fees, expenses for expert witnesses (whether or not called to testify), expenses for accountants or appraisers (whether or not called to testify), and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing party and shall not require initiation of a separate legal proceeding.

Unless otherwise directed by MST, Contractor shall continue performance under this Contract while matters in dispute are being resolved.



**17. SIGNATURE AUTHORITY:**

(Contractor), by signing, represents that he has the authority to bind contractor to the terms and conditions of this contract.

**18. AUTHENTICATION:**

IN WITNESS WHEREOF, the parties have duly executed two (2) identical counterparts of this instrument, each of which shall be for all purposes deemed an original thereof, on the dates set forth below.

MONTEREY-SALINAS TRANSIT

(Contractor)

By: \_\_\_\_\_

By: \_\_\_\_\_

Carl Sedoryk  
General Manager/CEO

(Name)  
(Title)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By \_\_\_\_\_

David C. Laredo  
MST General Council

Date: \_\_\_\_\_

## **SECTION 10 INSURANCE**

### **10.1 General:**

Contractor, at its sole cost and expense, for the full term of this Contract (and any extensions thereof), shall obtain and maintain at minimum all of the following insurance coverage. Such insurance coverage shall be primary coverage as respects MST and any insurance or self-insurance maintained by MST shall be excess of Contractor's insurance coverage and shall not contribute to it.

### **10.2 Types of Insurance and Minimum Limits**

Contractor shall obtain and maintain during the term of this Contract:

- (a) Worker's Compensation and Employer's Liability Insurance in conformance with the laws of the State of California (not required for Contractor's or subcontractors having no employees) with limits of not less than one million dollars (\$1,000,000) per occurrence.
- (b) Contractor's vehicles used in the performance of this Contract, including owned, non-owned (e.g. owned by Contractor's employees), leased or hired vehicles, shall each be covered with Commercial Automobile, Liability Insurance in the minimum amount of one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- (c) Contractor shall obtain and maintain Comprehensive General Liability Insurance coverage in the minimum amount of one million dollars (\$1,000,000) combined single limit, including bodily injury, personal injury, and property damage.

### **10.3 Other Insurance Provisions**

- (a) As to all insurance coverage required herein, any deductible or self-insured retention exceeding \$5,000.00 shall be disclosed to and be subject to written approval by MST.
- (b) If any insurance coverage required hereunder is provided on a "claims made" rather than "occurrence" form, Contractor shall maintain such insurance coverage for five (5) years after expiration of the term (and any extensions) of this Contract.
- (c) All required Automobile Liability Insurance and Comprehensive or Commercial General Liability Insurance shall contain the following endorsement as a part of each policy: "MST is hereby added as an

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additional insured as respects the operations of the named insured."

- (d) All the insurance required herein shall contain the following clause: "It is agreed that this insurance shall not be canceled until thirty (30) days after MST shall have been given written notice of such cancellation or reduction."
- (e) Contractor shall notify MST in writing at least thirty (30) days in advance of any reduction in any insurance policy required under this Contract.
- (f) Contractor agrees to provide MST at or before the effective date of this Contract with a certificate of insurance of the coverage required.
- (g) If Contractor, for any reason, fails to maintain insurance coverage, which is required pursuant to this CONTRACT, the same shall be deemed a material breach of contract. MST, at its sole option, may terminate this CONTRACT and obtain damages from the Contractor resulting from said breach. Alternatively, MST may purchase such required insurance coverage, and without further notice to Contractor, MST may deduct the cost therefore from Contractor's invoices charges for services rendered.

## SECTION 11 DAVIS-BACON ACT REQUIREMENTS

### 11.1 MINIMUM WAGES

- A. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is on copy at the MST business offices, and is made a part of this contract, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 24.1(d) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where the workers can easily see it.

- B. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- C. If the contractor does not make payments to a trustee or other person, the contractor may consider as part of the wages of any

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laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- D. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  2. The classification is utilized in the area by the construction industry; and
  3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- E. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rates (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

The wage rate (including fringe benefits where appropriate) determined pursuant to this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

## 11.2 WITHHOLDING

MST shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract.

In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, MST may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 11.3 PAYROLLS AND BASIC RECORDS

- A. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide

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fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- B. The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to MST for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies for copies of payrolls by all subcontractors.

Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1. That the payroll for the period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;
2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from

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the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance”.

The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

- C. The contractor or subcontractor shall make the records available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be ground for debarment action pursuant to 29 CFR 5.12.

#### 11.4 APPRENTICES AND TRAINEES

- A. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on



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the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid no less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau for Apprenticeship and training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- B. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the

wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid no less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid no less than the applicable wage rate on the wage determination for the work actual performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- C. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

#### 11.5 COMPLIANCE WITH COPELAND ACT REQUIREMENTS

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

#### 11.6 SUBCONTRACTS

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (0) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

#### 11.7 CONTRACT TERMINATION - DEBARMENT

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

11.8 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REQUIREMENTS

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

11.9 DISPUTES CONCERNING LABOR STANDARDS

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general dispute clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and MST, the U.S. Department of Labor, or the employees or representatives.

11.10 CERTIFICATION OF ELIGIBILITY

- A. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- B. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- C. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18, U.S.C.1001.

11.11 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

A. OVERTIME REQUIREMENTS

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. VIOLATION; LIABILITY FOR UNPAID WAGES; LIQUIDATED DAMAGES

In the event of any violation of the clause set forth in paragraph 2.1, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 6.1, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth.

C. WITHHOLDING FOR UNPAID WAGES AND LIQUIDATED DAMAGES

MST shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph C.

D. SUBCONTRACTS

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

E. SECTION 107 (OSHA)

The contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S. C. section 333, and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 C.F.R Part 1926. Among other things, the contractor agrees that it will not require any laborer or mechanic to

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work in unsanitary, hazardous, or dangerous surroundings or working conditions.

The contractor also agrees to include the requirements of this section in each subcontract. The term “subcontract” under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a “subcontractor” under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a “subcontractor” if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is no a “subcontractor.” The requirements of this section do no apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.