



**Metropolitan
Transit
System**

REQUEST FOR PROPOSALS

**BEYER BLVD PATHWAY BEAUTIFICATION
PROJECT**

MTS DOC. NO. PWG410.0-25.



San Diego Metropolitan Transit System
1255 Imperial Avenue, Suite 1000, San Diego, CA 92101



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1. INTRODUCTION

Casa Familiar is partnering with the San Diego Metropolitan Transit System (MTS) to launch a public walkway improvement project that will enhance the quality of life in San Ysidro by improving the walkability and safety along Beyer Blvd Pathway, which leads community into the Beyer Trolley Station. For purposes of this MTS solicitation, Casa Familiar will be the Point of Contact for this solicitation (See Section 1.2 of this solicitation). Any successful contractor(s) resulting from this solicitation will be requested to enter into a contract with MTS.

Applications are requested from interested qualified artists to envision, engage with the community, and develop public art on Beyer Blvd pedestrian pathway in San Ysidro on alongside the Beyer Trolley Station; connecting it to the San Ysidro Cultural Corridor on Cypress Drive. An artist or artist team is sought to work with the San Ysidro community input to design site-specific artwork for the Cultural Corridor and consult during installation of artwork at the site by MTS.

The current condition of the Project pathway is an unwelcoming strip of dirt and broken concrete along MTS's right-of-way, which runs parallel to the Blue Line Trolley. The current pathway lacks lighting, adequate concrete to walk or bike, or other amenities, creating a blighted appearance and a low sense of safety for the community. The artists selected will work closely with Casa Familiar and the community members to develop the ideas which will help enhance the vision of a vibrant San Ysidro.

MTS is a California public agency established under Section 120000 et seq. of the California Public Utilities Code. MTS and its subsidiaries are subject to the California Tort Claims Act as codified in California Public Utilities Code § 120202.

The services described in these specifications may be purchased with the assistance of a grant from the Federal Transit Administration (FTA), Moving Ahead for Progress in the 21st Century (MAP-21) or Fixing America's Surface Transportation Act (FAST-ACT), Public Law 112-141, as amended. The successful Proposer will be required to comply with all terms and conditions prescribed for third-party contracts in a grant contract between the United States of America and MTS.

The services described in these specifications may also be purchased with the assistance with Clean California Local Grant Program (CALTRANS) funds. The successful Proposer will be required to comply with all terms and conditions prescribed for third-party contracts in a grant contract between the CALTRANS and MTS.

This document, together with its attachments, comprises the Request for Proposals (RFP). Responses to this RFP should be submitted in accordance with the instructions provided.

1.1. CALENDAR OF EVENTS

The schedule of events leading from the issuance of the RFP to award of a contract is as follows:

Event	Date*
MTS Issues Request for Proposals	September 16, 2024
Pre-Proposal Meeting via Zoom	10:00 A.M., Prevailing Local Time, on September 26, 2024
Interested Artist(s) meet community at Construyendo Juntos 212 West Park Avenue, San Ysidro, CA 92173	5:30 PM, October 8, 2024
Deadline for Submitting Written Questions/ Clarifications	5:00 P.M., Prevailing Local Time, on October 11, 2024
<i>Proposal Due Date</i>	<i>4:00 P.M., Prevailing Local Time November 4, 2024</i>
Proposal Presentations, Demonstrations, Interviews	Week of November 18, 2024
Notification of Selected Artist(s)	November 26, 2024

*These dates are tentative and subject to change by MTS.

Submissions arriving later than the Proposal Due date and time listed above, Prevailing Local Time (PST), or at a different location, will not be considered.

1.2. MTS POINT OF CONTACT

All questions regarding the RFP shall be via e-mail or call to: Francisco Morales Franciscom@casafamiliar.org 619 428-1115 x206. Proposers are directed to not contact other Casa Familiar/MTS staff, or MTS Board members in connection with this RFP. Failure to follow this instruction will result in disqualification of any potential Proposer.

1.3. ENCOURAGEMENT OF DISADVANTAGED BUSINESS ENTERPRISES AND OTHER SMALL BUSINESSES

In furtherance of MTS's Disadvantaged Business Enterprise (DBE) Program and MTS's program to foster small business participation, MTS highly encourages Proposer to include participation of DBEs, minority owned businesses (MBEs), women owned businesses (WBEs), disabled veteran business enterprises (DVBES), lesbian gay bisexual transgender owned businesses (LGBTs), Persons with Disabilities (PDBE) or small businesses (SB) for any potential subcontracting opportunities on this Contract. If assistance is needed to locate these certified firms, please contact Samantha Leslie, MTS DBE Liaison Officer, at DBEProgram@sdmts.com.

2. PROPOSER INSTRUCTIONS

2.1. MTS'S RIGHTS UNDER THIS SOLICITATION

In soliciting proposals under this Request for Proposals, MTS reserves the rights to exclusively:

- 1) Reject any and all Offers;
- 2) Reject conditional Offers;
- 3) Issue a subsequent solicitation;
- 4) Cancel the entire solicitation;
- 5) Remedy technical errors in the solicitation process;
- 6) Appoint evaluation committee members;
- 7) Reassign evaluation committee members;
- 8) Seek the assistance of outside technical experts in evaluation of Proposals;
- 9) Approve or disapprove the use of particular subcontractors;
- 10) Establish a short list of eligible Proposers after review of Proposals;
- 11) Negotiate with any, all or none of the Proposers;
- 12) Solicit best and final offers from all or some of the Proposers;
- 13) Award contract (s) for all or part of the Specifications or Scope of Work
- 14) Award a contract to one or more Proposers;
- 15) Award other than the lowest cost offer;
- 16) Waive minor informalities and irregularities in Proposals.

2.2. PRE-PROPOSAL MEETING/SITE VISIT

A Non-mandatory Pre-Proposal meeting will be held on the date listed on the Calendar of Events via Zoom at the following link.

Join Zoom Meeting

<https://us06web.zoom.us/j/84160726617?pwd=CrSWBHAIacQhZ33UJvrCj9ATJXwfQx.1>

Meeting ID: 841 6072 6617

Passcode: 985228

While attendance at this meeting is not mandatory, prospective bidders are encouraged to attend.

2.3 COMMUNITY MEETING

A Non-mandatory community meeting will be held on the date listed on the Calendar of Events.

While attendance at this meeting is not mandatory, prospective bidders are encouraged to attend, as proposals will be partly evaluated based on the incorporation of input from the community at this meeting.

2.3. INTERVIEWS

During the evaluation period, MTS may interview some or all proposers. MTS has identified the week listed on the Calendar of Events for interviews. Proposers will be asked to keep this date available. As no other interview dates will be available Proposers who are unable to attend their interviews as scheduled may be eliminated from further participation in this competitive

procurement. The interview may consist of a short presentation by the Proposer after which the Evaluation Committee may solicit information relative to the Proposer's proposal and qualification. The committee will use pre-established criteria during the interview to score and develop a final recommendation.

2.4. EXAMINATION OF PROPOSAL DOCUMENTS

By submitting a proposal, Proposer represents that it has thoroughly examined and become familiar with the requirements of this RFP, especially the Instructions to Proposers and the Scope of Work, and that it is capable of performing the quality of work necessary for the MTS to achieve its objectives as described in this Solicitation.

2.5. ADDENDA

MTS reserves the right to amend the RFP at any time. Any amendments to or interpretations of any content of this RFP shall be via written addenda. Casa Familiar shall provide copies of Addenda to all prospective Proposers via email. Failure of any prospective Proposer to receive the notification or addendum shall not relieve the Proposer from any obligation under its proposal as submitted under the RFP. All addenda issued shall become part of the RFP. Prospective Proposers shall acknowledge the receipt of each individual addendum and all prior addenda in their proposals using the Addenda Acknowledgement form provided herein. Proposers who fail to follow this instruction may be disqualified from further participation in this competitive procurement.

If MTS determines that the addenda may require significant additional time for the preparation of proposals, the deadline for submittal may be postponed by a number of days that MTS determines will allow Proposers adequate time to revise their proposals. Any new due date shall be included in the addenda.

2.6. CLARIFICATIONS

2.6.1. EXAMINATION OF DOCUMENTS

Should a Proposer require clarifications of this RFP, the Proposer shall notify Casa Familiar in writing via email. Should it be found that the point in question is not clearly expressed in the Solicitation, Casa Familiar will publish an addendum of clarification.

2.6.2. SUBMITTING REQUESTS

- A. Questions, including those that could not be specifically answered at the pre-proposal meeting, clarifications, or comments must be submitted in writing to Francisco Morales via email at Franciscom@casafamiliar.org, must be received by Casa Familiar no later than the date and time listed on the Calendar of Events.
- B. All requests must provide a sufficient amount of information, such that MTS is able to craft an appropriate response, based upon the initial submittals. Any information considered by Proposers to be Proprietary, Trade Secret, or otherwise Confidential shall also be clearly identified. MTS will develop its response from its interpretation of the content of the request. Thus, inadequate or irrelevant information may cause MTS to decline the request.

2.6.3. MTS RESPONSES

MTS's responses will be provided in writing to all prospective Proposers by Casa Familiar via email. To the extent possible, MTS will not disclose such proprietary information to other Proposers or "interested parties."

2.7. SUBMISSION OF PROPOSALS

2.7.1. DUE DATE AND TIME

Proposals must be submitted by no later than the date and time listed on the Calendar of Events. Proposals received after the above-specified date and time will be returned to the Proposer unopened.

2.7.2. SUBMITTAL FORMAT

Electronic Copies:

Proposers are to email a copy of their proposal to Francisco Morales Franciscom@casafamiliar.org at Casa Familiar. The proposal and the cost proposal shall be submitted as separate documents. The cost proposal shall be submitted in Excel file format and the Proposal shall be submitted in PDF file format.

Proposers shall be entirely responsible for any consequences of inadvertent opening of unsealed or improperly identified packages. It is the Proposer's sole responsibility to see that its proposal is received as required. Proposals arriving late due to a delay in delivery will not be accepted.

2.7.3. ACCEPTANCE OF PROPOSALS

- A. MTS reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.
- B. MTS reserves the right to withdraw this RFP at any time without prior notice, and MTS makes no representations that any contract will be awarded to any Proposer responding to this RFP.
- C. MTS reserves the right to postpone proposal openings for its own convenience.
- D. MTS reserves the right to require confirmation of information furnished by Proposer, or to ask the Proposer for additional evidence of qualifications to perform the work, or to obtain information from any source that has the potential to improve the understanding and evaluation of the proposals.
- E. Proposals received by MTS are public information, and will be made available to the public upon request after award.
- F. Proposals submitted are not to be copyrighted.

2.8. PRE-CONTRACTUAL EXPENSES

Pre-contractual expenses are defined as expenses incurred by Proposer in:

- A. Preparing its proposal in response to this RFP;

- B. Submitting that proposal to MTS;
- C. Negotiating with MTS any matter related to its proposal; or
- D. Any other expenses incurred by Proposer prior to award of the Contract.

MTS shall not, in any event, be liable for any pre-contractual expenses incurred by Proposer in the preparation of its proposal. Proposer shall not include any such expenses in its proposal.

2.9. PRE-AWARD AUDIT

Prior to award of a Contract, short-listed Proposers may be required to undergo an audit of their proposed costs and prices. MTS, at its sole discretion and expense, will conduct the audit to determine if such Proposers' prospective prices are fair and reasonable.

2.10. JOINT OFFERS

Where two (2) or more Proposers intend to submit a single proposal to this RFP, they shall do so on a prime-subcontractor basis rather than as a joint venture. MTS intends to contract with a single Proposer and not with joint ventures.

2.11. SINGLE PROPOSAL RESPONSE

If only one (1) proposal is received in response to this RFP, and it is found by MTS to be responsive and responsible, a detailed cost/price proposal may be requested of the single Proposer. A price or cost analysis, or both, possibly including an audit, may be performed by or for MTS of the detailed cost/price proposal to determine if the price is fair and reasonable. The Proposer has agreed to such analysis by submitting a proposal in response to this RFP.

A price analysis is an evaluation of a proposed price that does not involve an in-depth evaluation of all the separate cost elements, and the profit factors that comprise a Proposer's price proposal. It should be recognized that a price analysis through comparison to other similar procurements, must be based on an established or competitive price of the elements used in the comparison. The comparison must be made to a purchase of similar quantity, involving similar specifications and in a similar timeframe. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto. Where it is impossible to obtain a valid price analysis, it may be necessary to conduct a cost analysis of the proposed price.

A cost analysis is a more detailed evaluation of the cost elements in the Proposer's Offer to Perform. It is conducted to form an opinion as to the degree to which the proposed costs represent what the Proposer's performance should cost. A cost analysis is generally conducted to determine whether the Proposer is applying sound management in proposing the application of resources to the contracted effort, and whether costs are allowable, allocable, and reasonable. Any such analyses and the results there from, shall not obligate MTS to accept such a single proposal; and MTS may reject such proposal at its sole discretion.

2.12. TAXES

Price proposals are subject to state and local sales taxes. However, MTS is exempt from the payment of federal excise and transportation taxes.

2.13. CONTRACT TYPE

MTS intends to award a firm-fixed price contract to the successful Proposer whose Proposal presents the most advantageous terms to the Agency, price, and scope of work/technical elements having been considered.

2.14. PROPOSED AGREEMENT

As a condition of award, the successful Proposer agrees that it will sign MTS's Standard Agreement and not insist upon the Agency signing any other agreement document.

The successful Proposer will be subject to the provisions contained in the Sample Standard Agreement, Standard Conditions, and Federal Requirements and this includes any changes that may be made to reflect the terms of the successful Proposer's proposal. The final Agreement shall also incorporate other pertinent terms and conditions set forth in this RFP.

The Proposer's attention is directed to the Insurance section which specifies the minimum insurance requirements that must be met by the successful Proposer. The Proposer is required to provide evidence of its ability to acquire the required insurance with its proposal. Should the Proposer be unable to provide evidence of insurance within fourteen (14) days after notification of award by MTS, award may be made to an alternative Proposer.

The Proposers inability or unwillingness to meet any requirements set forth in herein, as a condition of contract award, must be stated as an exception in the proposal.

Any exceptions to or deviations from the requirements of this RFP must be submitted on or before the proposal submission deadline or proposal may be deemed non-responsive.

2.15. PROTESTS

Any protests by an interested party regarding this procurement shall be made in accordance with the protest procedures of MTS:

2.15.1. PROTESTS BASED ON CONTENT OF PROCUREMENT SOLICITATION

Protests based on the content of the procurement solicitation, must be in writing, and received by MTS within ten (10) calendar days after the first advertisement of the RFP. The Chief Executive Officer (CEO) or designee, will notify all Proposers that a protest has been filed, and will issue a written decision on the protest prior to the due date. A protest may be renewed by refiling the protest with MTS within fifteen (15) calendar days from the postmark date of the Notice of Intent to Award. The protest must be received by MTS no later than 4:00 p.m. PST on the due date.

2.15.2. PROTESTS RECEIVED AFTER PROPOSAL DUE DATE

MTS will evaluate all proposals and determine the best-qualified proposers. A Notice of Intent to Award will be emailed to all proposers. Any protest to the notice must be in writing and received by MTS within fifteen (15) calendar days from the postmark date of the notice. The protest must be received by MTS no later than 4:00 p.m. PST on the due date.

2.15.3. CONTENTS OF PROTESTS

The protestor must demonstrate or establish a clear violation of a specific law or regulation, e.g., a violation of the prohibition against exclusionary or unduly restrictive specifications. The protest must contain a full and complete written statement of the grounds for protest and all supporting documentation. MTS may, but is not obligated to, request additional information concerning the grounds for protest.

2.15.4. REPLIES TO PROTESTS

MTS will review all protests as soon as possible. All material submitted by the protestor will be considered. Such material will not be withheld from any interested party outside of MTS or any agency, which may be involved with the procurement except to the extent that the withholding of information is permitted or required by law or regulation. If the protestor considers that the protest contains proprietary material, which should be withheld, a statement advising of this fact may be affixed to the front page of the protest document and alleged proprietary information shall be so identified wherever it appears.

The MTS Procurement Manager will reply to all protests in writing with its determination.

2.15.5. REQUEST FOR RECONSIDERATION OF PROTESTS

Upon receipt of the decision by the MTS Procurement Manager, the protestor may file a Request for Protest Reconsideration. A Request for Protest Reconsideration must be directed to the MTS CEO in writing and received within five (5) full working days from the postmark date of the reply from MTS. The MTS CEO shall respond to the protest in writing with his or her determination. The protest must be received by MTS no later than 4:00 p.m. PST on the due date.

All protests shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest.

2.15.6. ADMINISTRATIVE APPEAL HEARING

Protestors shall have an opportunity to appear and be heard before the Board prior to the opening of the proposals, in the case of protests based on the content of the procurement solicitation or prior to final award, in the case of protests based on other grounds or the renewal of protests based on the content of the solicitation. A request for an Administrative Hearing regarding a protest shall be in writing and directed to the General Counsel. A request for an Administrative Hearing shall be received within five (5) business days of the MTS CEO's written decision. The protest must be received by MTS no later than 4:00 p.m. PST on the due date.

The decision on the protest by the Board shall be in writing, and constitutes a final administrative decision for purposes of judicial review pursuant to Section 1094.6 of the Code of Civil Procedure.

2.16. CHANGES

2.16.1. PRE-AWARD

- A. Requests for Clarification and Addenda

Prior to award of a contract, the Scope of Work/Technical Specifications, Addenda, Sample Standard Agreement, Standard Conditions, Federal Requirements, Forms, and all certification documents of this RFP constitute the potential contract. Any inquiry regarding this solicitation must be in writing except that MTS will entertain oral inquiries at the Pre-Proposal meeting, if one is held. To be considered, inquiries must be addressed to the Procurement Officer. Any requests to change these documents after the Pre-Proposal meeting must be submitted in writing to [to Francisco Morales Franciscom@casafamiliar.org](mailto:Francisco Morales Franciscom@casafamiliar.org) at Casa Familiar via email and all changes to this RFP will be made by written addendum. **There will be no oral changes - oral communications are not binding.** Proposers are advised that MTS is not able to ensure that it will be able to respond to inquiries received later than fifteen (15) business days prior to proposal due date. MTS shall issue responses to inquiries and any other corrections, amendments, etc., which it deems necessary in written Addenda issued at least seven (7) days prior to the proposal due date.

- B. [NOT APPLICABLE] Request for Approved Equals (RFA)

2.16.2. POST-AWARD

Upon contract award, the RFP in its entirety, all addenda, MTS' response to questions/clarifications, the final proposal determined to be the most advantageous to MTS, the conformed Scope of Work/Technical Specifications, Sample Standard Agreement, Standard Conditions, Forms and Federal Requirements, constitute the contract. Changes to the contract shall be conducted as follows:

- A. Changes by Proposer(s):

Proposed changes must be submitted in writing to the Contracting Officer for prior approval. The request must state the reason, any possible changes to the project schedule, and any impacts to the cost of the project.

The Contract Officer shall respond in writing to the proposed change. All approved changes shall be confirmed by written addendum or change order. Oral changes are not permitted or binding. The Proposer shall be liable for all costs resulting from and/or for satisfactorily correcting any specification change not properly ordered or approved by written modification to the contract. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with the contract dispute clause herein.

- B. Changes by MTS:

In the event that work, materials, or equipment shall be required that are not specified, indicated, or otherwise provided for herein, the Proposer shall, if ordered in writing by the MTS CEO or his designee, perform such work and furnish such materials or equipment at the Contractor's normal prices, less discounts ordinarily allowed to users of such materials or equipment or at regular labor charges less customary discount, or both.

If any work, materials, or equipment specified, indicated or otherwise provided for in the contract or in the specifications forming a part of the contract, is required to

be omitted from, in, or about the work, the Proposer shall, if ordered by the MTS CEO or designee, omit the performance of such work and the furnishing of such materials or equipment. There shall be deducted from the amount to be paid to the Proposer an amount, which the MTS CEO or designee, and the Proposer shall determine and mutually agree to be the reasonable value of such work, materials or equipment, and such determination and agreement shall be final and conclusive upon the Proposer.

It is understood, however, that the amount of work, materials, or equipment required by the contract shall not, in accordance with above provisions referring to additions or omissions, be so increased or diminished as to substantially alter the general character or extent of the contract.

2.17. DUTY TO CLARIFY OBVIOUS AMBIGUITY

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

2.18. CONFIDENTIALITY, THE CALIFORNIA PUBLIC RECORDS ACT, AND THE FREEDOM OF INFORMATION ACT

2.18.1. EXCLUSIVE PROPERTY

Responses to this RFP shall become the exclusive property of MTS and are subject to disclosure under the California Public Records Act (PRA).

Those elements of each Proposal that are trade secrets, as the term is defined in Civil Code Section 3426.1(d) or otherwise exempt by law from disclosure and which are prominently marked as TRADE SECRET, CONFIDENTIAL or PROPRIETARY may not be subject to disclosure. This may include private financial information about a Proposer, but does not include the proposed price submitted as part of the Proposal.

The California Public Contract Code section 20216 provides that other than proprietary information, the content of any request for proposal, any proposal received, and any other communications between a transportation agency and a potential Proposer on a contract that is subject to subdivision (a) shall be made available to the public no later than the same time that a recommendation for awarding a contract is made to the governing board or persons responsible for approving the award of a contract to a Proposer, except that the price proposed in any proposer's initial proposal shall be available upon the opening of the proposal by the agency requesting the proposal.

2.18.2. DISCLOSURE OF RECORDS

- A. Unless a State or Federal law or regulation requires that information or a document is exempt from disclosure to third parties, MTS does not consent to withhold information, merely because it is accompanied by a routine confidentiality statement.
- B. As provided by State and Federal laws, regulations, and guidance, MTS will review information and documents that are the subject of each confidentiality request to

determine the extent to which MTS must withhold the information or those documents.

C. Any genuinely confidential or privileged information should be:

- 1) Marked clearly and specifically as TRADE SECRET, CONFIDENTIAL or PROPRIETARY; and
- 2) Accompanied by a statement detailing why the information is exempt from public disclosure under State and Federal law. Simply restating the Civil Code definition of a TRADE SECRET is not sufficient. The statement must include a factual and legal analysis supporting the Proposer's conclusion that the specific document marked is exempt from disclosure.

2.18.3. EXEMPTION FROM DISCLOSURE MAY BE DEEMED UNRESPONSIVE

MTS will take into consideration, documents that the Proposer deems exempt from disclosure, which must be marked TRADE SECRET, CONFIDENTIAL or PROPRIETARY.

Proposers who indiscriminately identify all or most of their Proposals as exempt from disclosure without justification may be deemed unresponsive and disqualified from further participation in this competitive procurement.

2.18.4. INDEMNIFICATION OF MTS BY CONTRACTOR

The Proposer agrees to defend and indemnify MTS in any action on a PRA request for any of the contents of a Proposal marked TRADE SECRET, CONFIDENTIAL or PROPRIETARY.

Proposer agrees to absorb all costs and expenses, including attorneys' fees, in any action or liability arising from Proposer's claim that its documents are exempt from disclosure under the PRA.

2.18.5. PUBLIC INTEREST

The public interest exemption of the California PRA provides that an agency may withhold the disclosure of a record by showing that the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

Proposers must sign the attached California PRA acknowledgement form and submit with the proposal.

2.19. NO PUBLIC OPENING OF PROPOSALS

There will be no public opening of the proposals. Proposals will be treated as confidential until the contract is approved by the MTS Board of Directors for award.

3. PROPOSAL CONTENT, REQUIREMENTS AND FORMAT

3.1. PRESENTATION OF PROPOSAL

Proposals shall not include any unnecessarily promotional materials. Lengthy narratives are discouraged. The proposal should be brief and concise. Appendices should provide information directly relevant to the needs of the solicitation and not consist of the Proposer's general marketing materials.

3.2. LETTER OF TRANSMITTAL

The Letter of Transmittal shall be addressed to the Casa Familiar's Point of Contact as described in Section 1.2. Proposers shall submit a written narrative in a .pdf format to the Point of Contact as described in Section 1.2. describing your passion for and comprehension of the project as well as a description of your methodology for conceptualizing and creating art. This is your opportunity to convey your understanding of what we're looking for, why you're well-matched for the project, what is distinctly "you" in your approach to creating art, what excites you about this project, and what the panel can't tell about your qualifications and your art just from looking at your résumé and examples of past work. The letter must prominently include the name, address, telephone number, and e-mail address of the Artist.

Identification of Proposer, including name, address, and telephone number.

1. Proposed working relationship between Proposer and subcontractors, if applicable.
2. Name, title, address, and telephone number of contact person during period of proposal evaluation.
3. A statement to the effect that the proposal shall remain valid for a period of not less than one hundred and twenty (120) days from the date of submittal.
4. Signature of a person authorized to bind Proposer to the terms of the proposal.

3.3. TECHNICAL PROPOSAL

3.3.1. QUALIFICATIONS, RELATED EXPERIENCE, AND REFERENCES OF PROPOSER

This section of the proposal should establish the ability of the Proposer to satisfactorily perform the services by presenting evidence of:

- Experience in performing work of a similar nature;
- Demonstrated competence in the services to be provided;
- Proposer's financial ability to meet MTS requirements; strength and stability;
- Record of meeting performance standards on similar agreements; and
- Supportive client references.

Particular attention should be given to the requirements of the Scope of Work, to ensure the Proposer's ability to fulfill all requirements is demonstrated in its submittal.

Qualifications are demonstrated by the following:

Proposer shall:

- A. Submit a current professional résumé or curriculum vitae (CV) in .pdf format. If you are applying as a team, please include your team/studio résumé or CV. If that is not available, please combine the individual résumé or CV (one right after the other) of each team member into one .pdf document.
- B. Provide a brief profile of the Proposer (individual or firm), identify the types of services offered; the year the business was founded; form of the organization (corporation, partnership, sole proprietorship); number, size, and location of offices; and number of employees.
- C. Proposer shall provide a general description of the individual or firm's financial condition in the *Financial Questionnaire Form* located the Forms section of this RFP. Proposers shall identify any conditions: e.g., bankruptcy, pending litigation, planned office closures, impending merger, which may impede Proposer's ability to provide services.
- D. Submit examples of past work containing a maximum of 10 images and/or videos showing a range of different artworks with proper descriptions. [That's NOT 10 images and 10 videos for a total of 20 examples]. Submit images in .jpg, .png format with a maximum file size of 5 MB. Videos should be submitted as links to youtube, vimeo, or similar. The reviewing panel will only watch a combined running time of all submitted videos of 3 minutes..
- E. Identify subcontractors by name, address, contact person, telephone number, email and project function. Describe Proposer's experience working with each subcontractor. Describe role of proposed subcontractor.
- F. "Status of Current and Past Contracts Form," Proposer shall provide as a minimum three (3) references of current and past contracts where the firm has either provided services as a prime contractor or a subcontractor during the past five (5) years, for projects cited as related experience. A separate form must be completed for each contract. All fields on the form must be filled in. Proposer shall ensure it is providing an accurate contact name, telephone number and email of the person(s) at the organization most knowledgeable about the services performed. Inaccurate references may be a factor in the overall evaluation of the proposal. Each reference must specifically address start/end dates of the project and services provided that should be correlated with the requirements of this RFP. If Proposer is no longer providing the service, Proposer is to identify if a new contract was awarded to a different firm through the procurement process, or if the contract was terminated by either procuring agency or by the contractor for cause or convenience. If the contract was terminated, list the reason for termination. Proposer must identify and state the status of any litigation, claims or settlement agreements related to any of the contracts. Each form must be signed by the Proposer confirming that the information provided is true and accurate. Any requests for a conflicts waiver must be submitted with your proposal. MTS reserves the right to contact any and all clients listed as part of the reference verification.

3.3.2. ARTIST DRAFT CONCEPT

Describe and provide a draft mockup of the proposed artwork that you propose, including its size, color palette, and a general description of its content. Describe how you will work with MTS on finalizing the design concept before installation of murals.

The proposed design mockup shall be able to demonstrate:

- A. Cultural Relevance: Reflects the local culture or community values to enhance the connection and resonance.
- B. Meaningful Imagery: Incorporates symbols, images, or motifs that hold a significance to the community or purpose of the murals.
- C. Artistic Technique: Employs skilled artistic techniques suitable for the murals' scale, ensuring quality, and longevity.
- D. Artistic Innovation: Displays creativity and originality in the design, pushing artistic boundaries to inspire and captivate viewers.
- E. Artwork incorporates input provided by the local community on October 11, 2024.

3.3.3. WORK PLAN

- A. Provide a general Work Plan for creating and installing the proposed artwork through a narrative. The narrative must be able to illustrate the Proposer's understanding of MTS' needs.

5.1.1. INSURANCE

Submit a statement in the cover letter or provide proof that the required insurance coverage contained in the Sample Agreement can be obtained by the Proposer (to be submitted with the proposal as **Appendix C**). Should Proposer be unable to provide evidence of insurability, MTS may remove that Proposer's proposal from consideration.

3.3.4. EXCEPTIONS/DEVIATIONS

Proposer shall state any exceptions to or recommended deviations from the requirements of this RFP, segregating "technical" exceptions from "contractual" exceptions, and including RFP sections and page numbers. Where Proposer wishes to submit alternative approaches to meeting MTS' technical or contractual requirements, these should be thoroughly explained (to be submitted with the proposal as **Appendix D**).

Proposer may also propose procedural or technical enhancements/innovations to the Scope of Work which do not materially deviate from the objectives of the project.

3.4. COST AND PRICE PROPOSAL – A PRICING/COST FORM IS PROVIDED IN THIS RFP

Proposer shall provide pricing using the form(s) attached as ATT 1 Cost Pricing Form. Please provide pricing for your proposed artwork.

3.5. APPENDICES

Information considered by Proposer to be pertinent to this project, and which has not been specifically solicited in any of the previous sections, may be submitted as a separate attachment.

Proposers are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials. Appendices should be relevant and brief. Such additional suggestions will only be considered acceptable to the MTS if they are included in the resultant Agreement.

3.6. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – PRIMARY PARTICIPANT AND LOWER-TIER PARTICIPANTS

Each awarded contract may be a covered transaction for purposes of 2 C.F.R. Part 180 and Part 1200 in the event that federal funding is utilized for payment by MTS. As such, the successful Proposer or Proposers is required to verify that the successful Proposer or Proposers, its principals, as defined at 2 C.F.R. 180.995, or affiliates, as defined at 2 C.F.R. 180.905, are not excluded or disqualified as defined at 2 C.F.R. 180.940 and 180.935.

The successful Proposer or Proposers is required to comply with 2 C.F.R. 180, Subpart C, and must include the requirement to comply with 2 C.F.R. 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its proposal, the successful Proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by MTS. If it is later determined that the successful Proposer knowingly rendered an erroneous certification, in addition to remedies available to MTS, the Federal Government may pursue available remedies, including, but not limited to, suspension and/or debarment. The successful Proposer agrees to comply with the requirements of 2 C.F.R. 180, Subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer. The successful Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- Submission Requirements

Each Proposer and its proposed subcontractor consultants shall complete the certification form, *Certification of Primary Participant Regarding Debarment, Suspension, and other Responsibility Matters*, included in this RFP for itself and its principals and submit this certification with its proposal. Failure to do so may result in rejection of the proposal.

3.7. RESTRICTIONS ON CAMPAIGN CONTRIBUTIONS

3.7.1 FEDERAL RESTRICTIONS ON LOBBYING

As a recipient of federal funds, MTS is required to certify compliance with the influencing restrictions and efforts of Proposer to influence federal officials regarding specific procurements in excess of \$100,000 that must be disclosed pursuant to section 1352, Title 31, U.S. Code.

This RFP includes the following: a certification form entitled "Certification of Restrictions on Lobbying," the Office of Management and Budget (OMB) Standard Form LLL entitled "Disclosure of Lobbying Activities," and a document entitled "Limitation on Payments to Influence Certain Federal Transactions."

The Proposer to this solicitation will be required to complete and submit to MTS the certification form entitled "Certification of Restrictions on Lobbying" whether or not any lobbying efforts took place – see Restrictions on Lobbying Section. If the successful Proposer did engage in lobbying

activities, then OMB Standard Form LLL "Disclosure of Lobbying Activities" must also be completed and submitted to MTS. This form should be completed and submitted with the proposal. Failure to provide the completed and signed forms will result in the proposal being removed from consideration.

3.8. COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

The MTS Equal Employment Opportunity (EEO) Program will be a part of this agreement (The policies are located here: <https://www.sdmts.com/about-mts-reports-records-and-policies/policies-and-procedures>)

A Workforce Report form signed by the Proposer is a condition for the award of this contract.

1. Prior to the award of this contract, a Proposer must complete and submit a Workforce Report (Equal Opportunity Workforce Report Form included in the Forms Section of the RFP).
2. If MTS determines that there is underutilization of women and minorities in a Proposer's workforce, the Proposer shall be required to submit to MTS for its review and approval a written EEO Plan.
3. The Proposer's EEO Plan is to include goals and timetables for employment on a line-by-line (job title) basis. Goals and timetables must be designed to correct any identifiable deficiencies. Where deficiencies exist, the Proposer shall establish and set forth specific goals and timetables separately.
4. No Proposer will be required to discharge members of its workforce in order to increase the number of minority or female workers employed.

4. EVALUATION AND AWARD

4.1. EVALUATION CRITERIA

MTS will evaluate the offers based on the following criteria:

A. Pass/Fail Criteria

1. Proposer has demonstrated the ability to meet the insurance requirements described in the Agreement. Proof of ability should be attached to proposal. (P/F)
2. Proposer has demonstrated previous experience working for or with public agencies, transit entities, or corporations on a similar project as stated in the Scope of Work. (P/F)

If the Proposer does not meet any of the criteria mentioned above, their proposal may not be considered for evaluation.

The following sections will be scored, based on the totality of the proposal and its ability to best meet MTS's needs. Each of the individual factors listed in the descriptions below are example of the items that will be evaluated or scored.

The weight for each item is subject to the discretion of the evaluation team, based on the relevance to MTS's overall needs.

Award will be based upon criteria listed below, and may not necessarily be made to the Proposer offering the lowest price

B. Qualifications of the Firm or Individual 15%

Technical experience in performing work on services of a similar nature; experience working with public agencies; strength and stability of the firm or management personnel; strength, stability, experience, and technical competence of subcontractors; assessment by client references; references with demonstrated success in providing similar services.

C. Artist Draft Concept 40%

The design evaluation for the artwork will be based on five criteria: (1) Cultural Relevance, (2) Meaningful Imagery, (3) Artistic Technique, (4) Artistic Innovation and (5) incorporation of local community input from October 8, 2024 meeting (Construyendo Juntos). These criteria are crucial for evaluating the mural's overall impact and effectiveness in connecting with the community, expressing cultural significance, and showcasing artistic excellence.

The importance of these criteria lies in their ability to comprehensively assess the mural's design, ensuring that it not only reflects and respects the local culture but also communicates meaning through symbols and imagery relevant to the community. Evaluating artistic technique is essential for guaranteeing the quality and longevity of the mural, while encouraging artistic innovation ensures that the design goes beyond conventional boundaries, captivating and inspiring viewers.

D. Work Plan

30%

Depth of Proposer’s understanding of MTS’ requirements as set forth in the Scope of Work Section, and within this RFP; overall quality of work plan; logic, clarity, and specificity of work plan; appropriateness of labor distribution among the activities; ability to meet services proposed; ability to meet project timeline; reasonableness of the services proposed; methods or processes used for data retention and confidentiality; evidence of insurability.

E. Cost and Price

15%

The reasonableness of the total cost proposal and the competitiveness of the proposed price in comparison with other offers received; adequacy of market data that in support of proposed costs and prices; reasonableness of unit prices and labor rates; logical market basis of proposed prices.

4.2. PROPOSAL EVALUATION

MTS uses a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include experience and qualifications, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine the offer deemed most advantageous to MTS.

An evaluation committee will be appointed to review all proposals. The committee will be comprised of MTS, Casa Familiar and/or may include outside personnel. Committee members will initially evaluate each proposal using the pass or fail criteria identified in this RFP. Proposers who pass this first stage of testing will progress to the next step in the evaluation.

On the completion of the initial Pass/Fail review, the committee will evaluate proposals using the two-step process. Technical proposals will be reviewed and scored first without consideration for price. The committee will then open the cost and price proposals and evaluate and score them accordingly. During the technical evaluation, the committee, at its sole discretion may contact any or all of the Proposers with specific questions or requests for clarification. After both the technical and cost/price proposals have been evaluated and scored, the committee will arrive at a “comprehensive proposal score” for each proposal. A list of top ranked proposals within a competitive range will be developed based upon the total comprehensive scores provided by committee members. At this time, the committee may decide that the evaluation process is complete and submit a final recommendation to the CEO.

If the committee determined it to be necessary, it may then conduct interviews and negotiations with short-listed Proposers. MTS has established the dates listed in the Calendar of Events for interviews and negotiations if needed. Proposers are asked to keep these date(s) available. As no other interview dates are available. Proposers who are unable to attend their interview as scheduled may be eliminated from further participation. The interview may consist of a short presentation by the Proposer after which MTS may ask questions and/or request clarification related to any element of a proposal and its qualifications. MTS may also enter into negotiations with the Proposer.

At the conclusion of interviews and negotiations, the evaluation committee may choose to proceed using one of the following processes:

1. The committee may find it necessary to re-score the proposals in light of information gained during the interviews and negotiations process. The proposals will be scored in the same manner as the original proposals.
2. The committee may ask the Proposers to consider the dialog of negotiations and revise their proposals. A deadline will be set for submission of the revised proposals. If a Proposer is unable to meet the deadline or chooses not to revise its proposal, its existing proposal will be rescored along with revised proposals in the same manner as the original proposals. (Both Options A and B may result in a new ranking and competitive range.)
3. The committee may also elect to bypass both Options A and B, and move forward to Best and Final Offers (BAFO).

Proposers remaining within the competitive range may be asked to submit a BAFO. In the BAFO request, the Proposers may be asked to provide additional information, confirm or clarify issues and submit a final cost/price offer. A deadline for submission will be stipulated. The BAFO's will be scored in the same manner as the original proposals.

After the BAFO's are evaluated and scored, the evaluation committee may recommend to the MTS CEO, a proposal with the highest final ranking or a short list of top ranked proposals within the competitive range whose offers(s) are the most advantageous to MTS. The MTS CEO will review the evaluation committee's recommendation and may enter into further negotiations with the Proposer(s) or forward its decision to the full Board of Directors for final action.

4.3. AWARD AND EXECUTION

At the conclusion of evaluation, the evaluation committee will submit (with concurrence of the MTS CEO) a recommendation for award to the MTS' Board of Directors for consideration and approval. MTS may also negotiate contract terms with the selected Proposer prior to award and expressly reserves the right to negotiate with several Proposers simultaneously, and to award contracts to multiple Proposers offering the most favorable terms to MTS.

MTS reserves the right to award its total requirements to one Proposer or to apportion those requirements among several Proposers as MTS may deem to be in its best interest. In addition, negotiations may or may not be conducted with Proposers; Proposals should contain the Proposer's most favorable terms and conditions. Prior to award of the contract, the selected Proposer may be required to submit a pre-award audit of their financial records to confirm claims of financial stability and to ascertain the capacity of the Proposer's accounting system to properly administer the Agreement.

4.4. W-9 FORMS

Prior to award, all Contractors must have a W9 on file with MTS. Completed forms must be submitted to vendors@sdmts.com upon request by the Contract Officer.

4.5. CALIFORNIA WITHHOLDING FORMS

Prior to award, all Contractors must complete the Form 590 Withholding Exemption Certificate if they have a permanent place of business in California, or Form 587 Non-Resident Withholding Allocation Worksheet if they do not have a place of business in California. Completed forms must be submitted to vendors@sdmts.com upon request by the Contract Officer.

4.6. NOTIFICATION OF INTENT (NIA) TO AWARD AND DEBRIEFING

Proposers who submit a proposal in response to this RFP will be notified of MTS' intent to award a Contract. Any protest with this notice must comply with the protest requirements shown in the RFP. Proposers who were not awarded the contract may obtain a prompt explanation concerning the strengths and weaknesses of their proposal. Unsuccessful Proposers who wish to be debriefed must request the debriefing in writing, and MTS must receive it no later than three (3) days after the NIA is issued.

5. SCOPE OF WORK/TECHNICAL SPECIFICATIONS

5.1. SCOPE/BACKGROUND

The area of improvement in San Ysidro is the pedestrian path towards the Beyer Trolley station on MTS property located between Seaward Ave. And West Park Ave. The area is in tandem to the San Ysidro community effort for pedestrian safety, art, and greening efforts on the Cultural Corridor.



1. 3D/ Sculpture / Environmental / Land art/ Installation

The area serves as a gateway to the community but is poorly lit and deemed unsafe at night. The community has expressed interest in monuments illustrating the pathway. Examples can be creative benches to rest, illuminated structures that serve at night, and gateways to welcome transit users and passersby, and structures that incorporate environmental features / planting.

2. 2D/Mural Art

Incorporating into the existing mural art along San Ysidro, commissioned artist will also advise on possible surfaces to be built on the designated area. Murals are not limited to walls, and we encourage creative community murals on multiple surfaces.

Artists may submit applications for one or both artworks. The artists selected for the - Public Art Project are expected to design, fabricate, and transport permanent, site-specific artwork and consult during installation of artwork at the site by MTS /Casa Familiar.

5.2. PERIOD OF PERFORMANCE – ARTWORK

Proposer will propose a schedule as part of its Proposal. Notwithstanding, all installation work must be completed by March 27, 2025. Artist shall follow the installation schedule provided in their proposal. Any changes to said schedule must approved by MTS.

5.3. MAINTENANCE PLAN

MTS anticipates possible wear and tear and/or graffiti which may require maintenance once the murals have been completed. Successful Artist will provide MTS a Maintenance Manual upon mural completion that will provide MTS staff instructions on how it should be maintained to keep the mural's integrity.

Successful Artist shall also be available for five (5) years after completion of mural to conduct maintenance services on mural, upon request. During this 5-year period, MTS would ask the successful Artist for a quote for the proposed amount of hours for any requested repairs would need. After the 5-year period, there is no guarantee that MTS will request the successful Artist to complete maintenance repairs on the mural.

5.4. BUY AMERICA

This scope of work may trigger Buy America and/or Build America Buy America requirements, which apply to construction materials, manufactured products, rolling stock, iron and steel. The below list of definitions and examples is not exhaustive and is only to be used as illustrative and a guidance tool for Contractor compliance.

5.4.1 CONSTRUCTION MATERIALS

- A. Per Infrastructure Investment and Jobs Act (IIJA) Sec. 70912 (2)(C), all construction materials must be manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.
- B. "Construction materials" **includes** an article, material, or supply that is or consists primarily of:
 - i. non-ferrous metals;

- ii. plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- iii. glass (including optic glass);
- iv. lumber; or
- v. drywall.
- Exception: "Construction Materials" **does not include** an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

C. According to the Office of Management and Budget (OMB) Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure M-22-11, April 18, 2022, a Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computers.

5.4.2 [NOT APPLICABLE] MANUFACTURED PRODUCT

5.4.3 [NOT APPLICABLE] ROLLING STOCK

5.4.4 [NOT APPLICABLE] IRON OR STEEL

5.5. INVOICES

Invoices must be sent to the MTS Accounting Department, via email, at ap@sdmts.com. All invoices must have the Purchase Order and contract number clearly displayed to ensure timely payment. MTS will not pay on packing slips, receiving documents, delivery documents, or other similar documents. Invoices must be submitted for payment.

Payment terms shall be net 30 days from invoice date.

Contractors must also indicate if any of the invoiced amount(s) is for service or work provided by a subcontractor and indicate the amount that will be paid to the subcontractor. Contractors must also comply with the prompt payment requirements in the *Prompt Progress Payments* section of the Standard Conditions.

5.6. MATERIAL SAFETY DATA SHEETS (MSDS)

MTS retains the safety data sheets on an electronic database (currently CloudSDS). Upon award, Contractors shall email the MSDS for chemicals that any individuals may be exposed to, attention Ngan Nguyen, MTS Environmental Health and Safety Specialist at Ngan.Nguyen@sdmts.com to upload into the database. The Contractor shall notify the MTS Environmental Health and Safety Specialist if there are changes or updates to the MSDS during the term of the contract to ensure the MTS database is kept updated throughout the contract.

5.7. [NOT APPLICABLE] NO RIGHT TO POST SIGNS

6. ATTACHMENTS

ATT 1 Cost Pricing Form



7. SAMPLE STANDARD AGREEMENT, STANDARD CONDITIONS

STANDARD AGREEMENT

FOR

MTS DOC. NO. PWG410.0-25.

BEYER BLVD PATHWAY BEAUTIFICATION PROJECT

THIS AGREEMENT is entered into this _____ day of _____, 2024 in the State of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following, hereinafter referred to as "Contractor":

Name: _____ Address: _____

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

Telephone: _____ Email: _____

Authorized person to sign contracts _____
Name Title

The Contractor agrees to provide services as specified in the conformed Scope of Work/Technical Specification/Artist Proposal (Exhibit A), Contractor's Cost/Pricing Form (Exhibit B), and in accordance with the Standard Agreement, including Standard Conditions (Exhibit C), Federal Requirements (Exhibit D) Forms (Exhibit E), and Clean California Third Party Contract Requirements (Exhibit F)

The contract term shall be based upon the negotiated timeline for the creation and painting the murals included in the Proposal, but no longer than 2 months from the Notice of Proceed, and a five (5) year maintenance period. The maintenance period shall be effective from 5 years from the date the Artwork installation is completed MM/DD/YYYY

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

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

CONTRACT TO FABRICATE AND INSTALL ARTWORK

THIS CONTRACT is made and entered into on _____, 2024, by and between **SAN DIEGO METROPOLITAN TRANSIT SYSTEM**, a public agency, ("MTS") and _____ ("ARTIST").

RECITALS

WHEREAS, MTS intends to procure artwork as part of the _____ (the "Project"); and

WHEREAS, ARTIST has prepared and submitted an Artwork Conceptual Design Proposal that has been accepted by MTS; and

WHEREAS, MTS and ARTIST desire to enter into a contract for ARTIST to construct artwork for the Project in accordance with ARTIST's Artwork Conceptual Design Proposal as defined below.

WITNESS

MTS AND ARTIST MUTUALLY AGREE AS FOLLOWS:

7.1. ARTWORK DEFINED

The work of art (the "Artwork") to be supplied under this Contract must be the same as that Artwork described in ARTIST's Artwork Conceptual Design Proposal (hereinafter "Proposal"). A true and correct copy of the Proposal is attached hereto as Exhibit A and incorporated herein by this reference

7.2. EFFECTIVE DATE

This Contract commences on the date first hereinabove appearing and expires upon completion of the Maintenance Plan, unless sooner terminated or cancelled in the manner provided under Articles 17, 29 and 30 below.

7.3. TOTAL CONSIDERATION

The total consideration paid to ARTIST may not exceed, in the aggregate, the sum of \$TBD, which will be paid in accordance with the Payment Schedule attached as Exhibit A to this Agreement.

ARTIST is responsible for payment of any state or local sales taxes. ARTIST represents and warrants that MTS will have no obligations regarding payment of any commissions or any other obligation pursuant to ARTIST's agreements with galleries or agents and ARTIST is solely responsible for such obligations. ARTIST agrees that the total consideration includes any amounts ARTIST is obligated to pay to galleries or agents, if any.

7.4. METHOD OF PAYMENT

Upon completion of each phase of fabrication and installation as set out in the Artwork Budget included as part of the Proposal (Exhibit A), ARTIST must remit an invoice for review and approval by MTS to ap@sdmts.com. Payment of each approved invoice will be made by MTS within 30 days after receipt. MTS reserves the right to withhold payments if MTS's site visits indicate that

the progress of the Artwork is not in accordance with the Proposal or Contract requirements. MTS will provide notice to ARTIST of the reasons for withholding payment within 7 days after receipt of the invoice.

7.5. SCOPE OF SERVICES

See Section 5.

7.6. AUTHORIZED REPRESENTATIVES

The person designated in Article 31 to provide formal notices to ARTIST may designate, in writing, one or more Authorized Representatives to interact with the ARTIST regarding the production and installation of the Artwork. ARTIST must communicate with and take direction from Authorized Representatives acting within the scope of the written designation. This may include construction management personnel acting as consultants for MTS.

7.7. WORK SCHEDULE

ARTIST may not commence performance of any of the services identified in Section 5 above, until ARTIST receives a Notice to Proceed (NTP) from MTS. ARTIST must dedicate such time and effort as is necessary to fulfill ARTIST's obligations to completely finish and install the Artwork pursuant to this Contract in accordance with the Artwork Fabrication and Installation Schedule contained in the Proposal (Exhibit A). Time and strict punctual performance are of the essence to this Contract. MTS and ARTIST may agree to modify schedule. The revised schedule will be signed and dated by both parties, and will be attached and labeled as the Revised Schedule. ARTIST must respond within 7 days to any inquiry from MTS regarding the progress of the design for the Artwork.

7.8. MTS PRIOR APPROVAL OF ARTWORK

ARTIST must submit the following to MTS for technical approval: specifications that reflect compliance with MTS technical requirements and a digital image of the Artwork, as described in the Proposal (Exhibit A). MTS provided the relevant technical requirements during the development of the Artwork Conceptual Design Proposal, and the price proposed includes compliance with those requirements. The relevant technical requirements are attached as Section 5 and incorporated into this Contract. ARTIST may not begin to fabricate the Artwork until MTS has approved the specifications and digital image. MTS reserves the right to require ARTIST to modify the proposed Artwork to meet safety, aesthetic and/or technical requirements. MTS will specify any required material changes and document safety and/or technical requirements that justify such material changes within 30 days after delivery by ARTIST of the digital image. If MTS imposes additional technical requirements after Contract execution, that were not included in the technical requirements identified in Section 5, and such technical requirements cause an increase in cost for ARTIST to complete and install the Artwork, ARTIST may submit a written request for an equitable adjustment in the Total Consideration; any such equitable adjustment will be reflected in an amendment to this Contract. ARTIST must receive written approval by MTS of the Artwork digital image before ARTIST commences fabrication of the Artwork.

7.9. INSTALLATION OF ARTWORK

- A. At least 25 days prior to ARTIST's planned arrival at the Project site to begin installation, ARTIST must provide MTS with a Work Plan submittal detailing how ARTIST intends to accomplish the installation, including planned labor, equipment, materials, schedule and

- duration of work, installation methodology, access route (which must comply with MTS's Stormwater Pollution Prevention Plan (SWPPP)), and clean-up.
- B. At least 14 days in advance of the ARTIST's planned arrival at the Project site to begin installation, ARTIST must attend a kick-off meeting with MTS to discuss the planned installation.
 - C. The installation of the Artwork must meet or exceed the quality of the Project location's construction in all respects.
 - D. While working at the Project site, ARTIST must work in such a way as not to delay MTS's operations or disrupt MTS or MTS's Contractor work. ARTIST must respond to reasonable requests by MTS to modify its installation activities to avoid unreasonably delaying or obstructing MTS's services and operations. Likewise, MTS will timely respond to ARTIST's reports, if any, that MTS or MTS's Contractors are unreasonably delaying or disrupting ARTIST's installation efforts.
 - E. In accessing the Project site and performing the installation, ARTIST must comply with the terms of MTS's SWPPP, any applicable permits, and other general project requirements.
 - F. The Artist will coordinate closely with MTS to ascertain that the Project Site is prepared to receive the Artwork. Artist must notify Agency of any adverse conditions at the Site that would effect or impede the installation of the Artwork. The Artist is responsible for timely installation of the Artwork.
 - G. ARTIST is responsible for cleaning and protection of the Artwork until it is accepted by MTS. Once MTS is notified by ARTIST that the Artwork installation is complete, MTS will determine within 30 days whether it will accept the Artwork as installed.
 - H. Within 30 days after completion of the Artwork, ARTIST must remove all excess materials and rubbish related to the Artwork installation from the Artwork site. ARTIST is prohibited from using MTS's trash receptacles during installation and cleanup. ARTIST must restore the Artwork site (including the entire area affected by the fabrication and installation of the Artwork) to its prior condition if directed by MTS.

7.10. SAFETY

ARTIST must take all necessary precautions for the safety of employees on the work and the safety of other persons authorized to be present on the Artwork site. ARTIST must comply with all applicable provisions of federal, state, and local safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Artwork site. ARTIST must erect and properly maintain, at all times as required by the conditions and progress of the work, all necessary safeguards for the protection of workers and the public and must post danger signs warning against the hazards created by such features of construction. If and when requested by MTS, ARTIST must deliver to MTS a copy of ARTIST's safety plan for conducting the work (the "Safety Plan"). MTS will have the right, but not the obligation, to require ARTIST to correct any deficiencies in the Safety Plan. If there are any inconsistencies between this Contract and the Safety Plan, then the Contract takes precedence.

ARTIST must comply with the applicable provisions of the California Occupational Safety and Health Act of 1973 and the Labor Code. In addition to ARTIST's own safety procedures and any

safety procedures required under Federal, state, or local laws or regulations, including compliance with the provisions of the California Occupational Safety and Health Act of 1973, ARTIST must implement and enforce all safety requirements determined by MTS to be applicable to the performance of any work under this Contract.

7.11. QUALITY CONTROL

ARTIST must provide Quality Control (QC) for all items of work performed under this Contract, including the work of all subcontractors and suppliers both on-site and off-site. All costs for QC are deemed to be included in the total consideration.

For purposes of this Contract, QC is to be performed by ARTIST and is understood as the techniques, activities and inspections that sustain process and product control and measure the performance characteristics of a material, component, fabrication, installation, or system against specific contract acceptance criteria during work in-progress. QC refers to the act of taking measurements, testing, and inspecting a process or product to ensure that it meets Contract requirements. QC also includes the process of documenting all of these actions.

For purposes of this Contract, Quality Assurance (QA) is performed by MTS or its representative and is understood as the review, monitoring, observation, audit, and inspection or testing of work for assurance or verification purposes.

ARTIST must ensure that all Work is performed in accordance with applicable codes, standards, specifications and other special contractual requirements using qualified personnel and/or equipment.

7.12. PROPERTY DAMAGE

ARTIST must repair or replace any property damage (real or personal) caused by the acts or omissions of ARTIST or ARTIST's subcontractors and/or employees. ARTIST is solely responsible for all expenses and costs that may be necessary to comply with the requirements of this Article, and MTS has no responsibility or liability therefor. MTS may withhold payment if ARTIST has not completed any repair, replacement and/or restoration required under this Article. If ARTIST fails to repair or replace any damaged property as required by this Article within 30 calendar days after receipt of the written notice of such damage, MTS may undertake the required repairs, replacement and/or restoration at ARTIST's expense. MTS reserves the right to offset its costs of repairs, replacement and/or restoration against any payments owed to ARTIST.

7.13. STOP WORK ORDER

In addition to MTS's right to suspend work under any other provision of this Contract, MTS may require ARTIST to suspend all or part of the work called for by this Contract at any time for up to **90 days** after a written Stop Work Order is delivered to ARTIST, and for any further period as directed by MTS. The Stop Work Order will include a clear description of the work to be suspended and may also include guidance as to the action to be taken on subcontracts; and other requests for minimizing costs.

Upon receipt of a Stop Work Order, ARTIST must comply with its terms immediately and take all reasonable steps to minimize the cost associated with the work covered by the Stop Work Order during the period of work stoppage. Within the period specified by the Stop Work Order, or within any extension of that period to which the parties may agree, MTS may:

- Terminate the Work covered by the Stop Work Order, as permitted in Articles 29 and 30 .
- Cancel the Stop Work Order; or
- Allow the period of the Stop Work Order to expire.

ARTIST must resume work upon the cancellation or expiration of a Stop Work Order. An equitable adjustment will be made in the Work scope, Contract Price, or Contract time, as appropriate if:

- The Stop Work Order results in an increase in the time required for, or in ARTIST's cost properly allocable to, the performance of any part of this Contract;
- ARTIST asserts a claim for an adjustment within 30 days after the end of the period of work stoppage; however, if MTS decides the facts justify such action, MTS may receive and act upon any such claim asserted at any time prior to final payment under this Contract; and
- The Stop Work Order was not caused by ARTIST's default or other act or omission within the control or responsibility of ARTIST.

Any cost due to a Stop Work Order issued because of Contract noncompliance will be borne by ARTIST.

In preparation for and during suspensions of work, ARTIST must take every reasonable precaution to prevent damage to or deterioration of the work. ARTIST must repair or replace, at no cost to MTS, work that is damaged or deteriorated during a work suspension due to ARTIST's failure to comply with this duty. If MTS determines that ARTIST is not taking reasonable precautions and ARTIST fails to take the corrective action within 5 days after written notice from MTS, MTS may cause such action to be taken and recover the reasonable cost thereof from ARTIST.

7.14. TITLE TO ARTWORK/RISK OF LOSS

Notwithstanding any payment MTS may make to ARTIST prior to the completion of the Artwork, title to the Artwork will remain with the ARTIST until MTS accepts the Artwork as complete. At the time MTS accepts the Artwork, title to the Artwork will transfer to MTS. ARTIST will bear all risk of loss of the Artwork until title has been transferred to MTS, unless the Artwork is damaged or destroyed due to the gross negligence or intentional act of MTS, its agents, employees or contractors.

7.15. WARRANTIES

- A. ARTIST warrants that the Artwork is original, the product of ARTIST's own creative efforts as sole author of the Artwork, and that the Artwork does not infringe upon the rights of any person, business or corporation. ARTIST also warrants that unless otherwise stipulated in writing, the Artwork is an edition of one (1), and that ARTIST may not sell, license, perform or reproduce a substantially identical copy of the Artwork without the prior written consent of MTS.
- B. ARTIST will warrant and maintain the Artwork free from all faults or defects in material and workmanship for a period of one year after MTS's acceptance of the Artwork. This subsection of this Article does not extend to damage to the Artwork caused by the exposure to the elements, physical damage inflicted by MTS patrons or members of the

public, or any other damage unrelated to the material used in the Artwork or ARTIST's workmanship.

7.16. PROFESSIONAL STANDARDS

ARTIST warrants and guarantees that the Artwork provided hereunder will be designed, fabricated and installed in a professional manner. All services must be performed in the manner and in accordance with the professional standards observed by a competent practitioner of the profession in which ARTIST is engaged.

ARTIST represents and warrants to MTS that ARTIST possesses all required licenses, insurance, and other entitlements of whatever nature to legally pursue ARTIST's occupation and such licenses, insurance and other entitlements must be in full force and effect during the term of this Contract.

7.17. ACCEPTANCE OF ARTWORK

- A. MTS agrees to accept the completed Artwork, unless:
1. The Artwork was not fabricated or installed substantially in accordance with the Proposal (Exhibit A), MTS-approved specifications, or a reasonable standard of technical quality for similar artwork. If MTS refuses to accept the Artwork for this reason, ARTIST may appeal the refusal to the MTS CEO. The determination of the MTS CEO is final and binding.
 2. The Artwork, or any portion thereof, as completed by the ARTIST, does not conform to a reasonable standard of professional artistic quality. If MTS refuses to accept the Artwork for this reason and the ARTIST disputes MTS's refusal, the parties agree that the matter will be submitted to the arbitration in accordance with the rules of the Arts Arbitration and Mediation Services of California Lawyers for the Arts, or such other arbitration or mediation service to which both parties mutually agree. The scope of the arbitration is limited to a determination of whether the Artwork conforms to a reasonable standard of professional artistic or technical quality. The determination of the arbitrator will be final and binding upon MTS and ARTIST and neither has any further recourse or cause of action.
- B. MTS will have the right to inspect the Artwork during fabrication prior to completion or installation of the Artwork. MTS may request corrections and modifications necessary for the Artwork to conform to ARTIST's Proposal and the other requirements of this Contract. Prior to the date specified for completion of the Artwork, ARTIST must make all such corrections and modifications to which MTS and ARTIST mutually agree.
- C. If MTS refuses to accept the Artwork according to the provisions of this Article, it must notify ARTIST in writing specifying the reasons for such refusal within 30 calendar days after ARTIST's tender of the Artwork to MTS for acceptance. No prior payment to ARTIST will be deemed to waive MTS's right to refuse to accept the Artwork under this Article.
- D. If MTS refuses to accept the Artwork according to the provisions of this Article, MTS has the right, subject to ARTIST's right to dispute MTS's refusal, either:
1. To have ARTIST correct deficiencies in the Artwork, specified in the notice to ARTIST required under subsection B of this Article, at ARTIST's sole cost and

within a reasonable time, and then accept the Artwork if the deficiencies are remedied to MTS's satisfaction; or

2. To cancel this Contract for breach as set forth in Article 30, below, except that ARTIST has the right to cure said breach to MTS's satisfaction within 30 calendar days after receipt of MTS's notice of cancellation or to dispute MTS's determination as set out in paragraph A..
3. Remedies identified in subsections D1 and D2 above are cumulative and in addition to any other remedy available to MTS. Enforcement of one such remedy is not exclusive nor deemed an election of such remedy to the exclusion of any other or further remedy.
4. Payments to the ARTIST are not deemed as a waiver of MTS's right to refuse or accept the Artwork.

7.18. ABANDONMENT

If it becomes impossible for ARTIST to timely complete the Artwork because of illness, death, or injury (for example), or if ARTIST abandons the Artwork by failing to work on the Artwork during a continuous 30-day period, unless MTS, its agents, employees or contractors are the cause of ARTIST's inability to work on the Artwork during such period or MTS has issued a Stop Work Order, MTS may take such action as may be appropriate including, without limitation, cancelling this Contract for breach as set forth in Article 30.

7.19. ASSIGNMENT AND SUBCONTRACTING

- A. ARTIST's obligations imposed by this Contract are not assignable or transferable without first obtaining the written consent of MTS, which consent may be withheld in MTS's sole discretion.
- B. If ARTIST subcontracts any portion of the work, any subcontractors must be properly licensed pursuant to the contractor's state license law (Business and Professions Code sections 7000 et seq.). Before performing any work, each subcontractor must provide MTS and ARTIST evidence that the subcontractor has Workers' Compensation insurance coverage if this insurance is required by state law.

7.20. COPYRIGHT

ARTIST expressly reserves every right available to them under U.S. and international copyright laws to control the making and disseminating of copies or reproduction of the Artwork, except as those rights are limited by this Contract. Contractor under this Agreement as shall be considered necessary by MTS may be retained until disposition has been made of any claim for damages.

1. ARTIST agrees to give a credit substantially in the following form: "Original owned by San Diego Metropolitan Transit System" in any public display or distribution of reproductions of the Artwork.
2. ARTIST hereby authorizes MTS and its successors and assigns to make photographs, drawings and other two-dimensional reproductions of the Artwork without compensation or prior consent of ARTIST if used solely for non-commercial purposes including, but not limited to, advertising, descriptive brochures, promotional materials, schedules, fare passes, and other similar purposes. All reproductions by MTS or its successors and assigns where the Artwork is the exclusive or primary subject will acknowledge the

- authorship of the ARTIST in substantially the following form: "Copyright ©, ARTIST's name, date" and in such manner and location as prescribed under U.S. copyright laws.
3. The Artwork Conceptual Design Proposal and all accompanying materials, models, drawings, plans, sketches and specifications will become the property of MTS upon submission to MTS. MTS may use, reproduce, make derivations and distribute these documents, etc. in any fashion or manner MTS desires, provided that the use and distribution of these documents complies with the provisions set forth in subsection 2 above.

7.21. ARTISTS' RIGHTS/MTS DUTIES RELATIVE TO ARTWORK

Applicant hereby acknowledges that Applicant is familiar with all rights under the Visual Artists Rights Act of 1990 (17 U.S.C. Sections 106A and 113(d)), the California Art Preservation Act (California Civil Code Sections 987 and 989) (collectively, "Acts") and any other local, state, foreign or international law (collectively, "Artist Rights Laws") that protect against the alteration of a work of art and protect the artist's getting credit for a work or art. The Acts and Moral Rights Laws require that a person who intends to waive these provisions must do so expressly in writing.

The ARTIST, for themselves and their heirs, beneficiaries, devisees and personal representatives, expressly waive any right or benefit that ARTIST has or may have under the Artist Rights Laws, and hereby releases, acquits and discharges MTS from all suits, claims, actions, liability, damages and expenses arising out of the display, use, maintenance, movement, removal or alteration of the Artwork on the Project.

- A. MTS may not intentionally destroy, damage, alter, modify, or change the Artwork in any way except after notice as required under applicable law. ARTIST acknowledges that use of the Artwork site by the public and MTS's cleaning and maintenance of the Artwork site may cause wear and tear to the Artwork. Such wear and tear will not be deemed to be an unpermitted alteration of the Artwork. If an alteration should occur, either intentionally or unintentionally, ARTIST may notify MTS in writing denying authorship of the Artwork or requesting that their name not be displayed as provided in Article 22, below.
- B. If, after acceptance of the Artwork, repair to the Artwork is required, MTS will send ARTIST a notice giving ARTIST the opportunity to repair the Artwork, so long as within the period of performance of the contract.
 1. If within 30 days after MTS sends notice to the ARTIST at the address set forth in Article 31, ARTIST does not respond to the notice, , MTS may contract with someone qualified to repair the Artwork and ARTIST will have no recourse for damages against MTS.
 2. If MTS reasonably determines that damage to the Artwork is irreparable or impractical to repair, MTS may take any action it deems appropriate under the circumstances.
 3. ARTIST must notify MTS of a change of their address for the purpose of obtaining notice under this Article. Failure to notify MTS will constitute a waiver of ARTIST's right to be notified by MTS prior to repair of the Artwork.

- C. When emergency repairs are necessary to prevent the loss of or further damage to the Artwork, or for public safety, such repairs may be undertaken by MTS without advance notice to ARTIST and such repairs will not be deemed to constitute an artistic alteration. If such repairs are substantial, ARTIST may deny authorship as provided in Article 22, below.
- D. After acceptance of the Artwork, MTS will have the right to relocate, store or sell the Artwork or remove it from display in its sole discretion without notice to ARTIST, except for any payment that may be required under Civil Code Section 986.
- E. If, after acceptance of the Artwork, MTS reasonably determines that it is necessary to remove the Artwork and such removal is likely to cause damage or destruction to the Artwork, MTS will give ARTIST written notice to remove the Artwork in the manner set forth in Article 31, below.
 - 1. ARTIST must respond in writing within 30 days after MTS sends notice. In its response, ARTIST must inform MTS whether ARTIST intends to exercise or waive their right to remove the Artwork under this Article. If ARTIST does not respond to the notice within 30 days after MTS sends notice to the ARTIST at the address set forth in Article 31, ARTIST will have no recourse for damages against MTS. ARTIST must notify MTS of a change of his or her address for these purposes. Failure to so notify MTS will constitute a waiver of ARTIST's right to be notified by MTS prior to removal of the Artwork.
 - 2. Unless ARTIST has waived their right or has failed to timely respond to MTS's notice, ARTIST will have the right to remove the Artwork at ARTIST's expense within 90 calendar days after MTS provides such notice. In such case, ARTIST must pay MTS the value (if any) of the Artwork after its removal and title to the Artwork will vest in ARTIST upon MTS's receipt of such payment. A dispute regarding the value of the Artwork will be submitted to the Arts Arbitration and Mediation Services of the California Lawyers for the Arts, or such other arbitration or mediation service to which both parties mutually agree.
 - 3. If ARTIST fails to remove the Artwork within the 90-day period or if ARTIST fails to timely respond to the notice, MTS will have the right to remove the Artwork and ARTIST will have no recourse against MTS for any damage to or destruction of the Artwork that may occur during such removal. In such case, MTS will have the right to display, store or dispose of the Artwork in MTS's sole discretion.
- F. If MTS cancels this Contract for breach and arranges to have the Artwork completed by another artist, ARTIST will be deemed to have waived his or her rights related to authorship of the Artwork under federal and state laws and under this Contract, except as set forth in Article 22, below. If ARTIST disputes such deemed waiver of his or her rights, ARTIST must submit a written objection to MTS within 30 calendar days after the date of MTS's notice of cancellation. In such event, the matter must be submitted to the Arts Arbitration and Mediation Service of the California Lawyers for the Arts, or such other arbitration or mediation service to which both parties mutually agree. If arbitration is held, the determination of ARTIST's rights under this Contract by the arbitrator is final and binding upon MTS and ARTIST and neither will have any further recourse or cause of action.

7.22. AUTHORSHIP OF ARTWORK

Except as provided in this Contract, ARTIST will retain the right to claim authorship of the Artwork. MTS will publicly display ARTIST's name on, at, or near the Artwork, except as provided below:

- A. If the Artwork is substantially damaged or artistically altered in a substantial manner, and if ARTIST gives written notice to MTS that ARTIST wishes to deny authorship, then MTS may no longer represent the Artwork to be the work of the ARTIST. If MTS disputes the right of ARTIST to deny authorship, the parties agree that the matter will be submitted to the Arts Arbitration and Mediation Service of the California Lawyers for the Arts, or such other arbitration or mediation service to which both parties mutually agree. The scope of the arbitration will be limited to whether the Artwork is substantially damaged or artistically altered in a substantial manner. The determination of the arbitrator will be final and binding upon MTS and ARTIST and neither will have any further recourse or cause of action.
- B. If the Artwork is substantially damaged or artistically altered in a substantial manner after the life of the ARTIST, MTS will consult with the California Arts Council, or their successors, in determining whether to continue representing the ARTIST as author of the Artwork.
- C. If MTS arranges to have another artist complete the Artwork as provided under Article 30 below, ARTIST's name must be publicly displayed on, at, or near the Artwork, unless ARTIST gives written notice to MTS not to display ARTIST's name or ARTIST wishes to deny authorship of the Artwork. If the work to complete the Artwork is substantial, MTS will consult with the California Arts Council, or their successors, regarding the selection of the artist who will complete the Artwork. After such consultation, MTS may select such artist in MTS's sole discretion. The name of the artist who completes the Artwork will be displayed in a manner equal to the display, if any, of ARTIST. The term "equal" means similar, not identical, and does not mandate any preference of position or size of location.
- D. If ARTIST effectively denies authorship of the Artwork for the reasons set out above or for any other reason, such action constitutes a waiver of all of ARTIST's rights related to authorship of the Artwork under federal and state law and this Contract.

7.23. INDEPENDENT CONTRACTOR

In providing the above-referenced services, ARTIST acts as an independent contractor and not as an employee of MTS. In accordance with that relationship, ARTIST must assume all responsibility for federal and state income tax withholding, FICA, SDI, and any other deductions from income that ARTIST is required to make as an independent contractor. ARTIST hereby agrees to indemnify and hold MTS, its officers and employees, harmless from any and all claims that may be made against MTS based upon any contention by any employee of ARTIST or by any third party, including but not limited to any federal or state agency, that an employer-employee relationship or a substitute therefore exists for any purpose whatsoever by reason of this Contract or by reason of the nature and/or performance of any obligation under this Contract.

7.24. WORKERS' COMPENSATION

Responsibility for payment due by MTS is limited to the compensation set forth in Article 3 above. MTS is not responsible for providing workers' compensation insurance or any other protective

insurance coverage or employment benefit payable to employees of ARTIST that is based upon the relationship of employer and employee.

7.25. THIRD PARTY OBLIGATION

ARTIST is solely liable to third parties with whom it enters into contracts to effectuate the purposes of this Contract. ARTIST must pay directly such parties for all amounts due under said arrangement. ARTIST must indemnify and hold MTS harmless from any and all claims and liabilities arising from such Contract. ARTIST must exert its best efforts to prevent any loss to MTS from the failure of proper performance of any third party. MTS's only obligation with respect to such third parties will be limited to reimbursement to ARTIST for those expenses for which MTS is obligated to reimburse by virtue of the terms of this Contract.

If ARTIST hires or contracts with employees or material suppliers, ARTIST must pay such employees and suppliers out of the payments made to ARTIST by MTS for completion of each phase of work. If any underpayment of wages or other amounts due ARTIST's employees and suppliers, MTS may withhold from ARTIST out of any payments due amounts sufficient to pay the claims of such employees and suppliers. In addition, before MTS is obligated to make final payment to ARTIST, MTS may require ARTIST to demonstrate to MTS's satisfaction that all employees and material suppliers have been fully paid.

7.26. INSURANCE REQUIREMENTS

A. Liability

1) Commercial General Liability

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

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

2) Automobile Liability

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

3) Workers' Compensation/Employer Liability

At all times during this contract, Contractor agrees to maintain Workers' Compensation and Employers' Liability Insurance in compliance with the applicable statutory requirements.

Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver.

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

- (1) Primary and Non-Contributory Insurance

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

- (2) Owner-Provided Builder's Risk

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

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

The CGL policy must contain the following endorsement: Contractual Liability Railroads ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage). Furthermore, Contractor shall maintain a Railroad Protective Liability coverage with limits of not less than \$2,000,000 each occurrence and \$4,000,000 annual aggregate, naming MTS as the named insured on the policy.

- (4) Professional Liability

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

- (5) Pollution Legal Liability

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

- (6) Contractor Equipment

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

(7) Installation Floater

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

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

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

(9) Crime Fidelity Insurance

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

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

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

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

(11) Property Insurance

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

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

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction

of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses. Coverage shall also include Technology Professional Liability Errors & Omissions appropriate to the Consultant's profession and work hereunder

7.24.2 MINIMUM POLICY LIMITS REQUIRED

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

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

<input checked="" type="checkbox"/>	B (1) Primary and Non-Contributory Insurance	
<input type="checkbox"/>	B (2) Owner Provided Builder's Risk	<hr/> Replacement Cost
<input type="checkbox"/>	B (3) Railroad Protective (Per Occurrence)	<hr/> \$2,000,000
	Railroad Protective (General Aggregate)	<hr/> \$4,000,000
<input type="checkbox"/>	B (4) Professional Liability	<hr/> \$
<input type="checkbox"/>	B (5) Pollution and Legal Liability	<hr/> \$
<input type="checkbox"/>	B (6) Contractor Equipment	<hr/> Replacement Cost
<input type="checkbox"/>	B (7) Installation Floater	<hr/> Replacement Cost
<input type="checkbox"/>	B (8) Garage Keeper's Legal Liability & Automobile Portion	
	(Combined Single Limit (CSL))	(Per Occurrence)
<input type="checkbox"/>	B (9) Crime Fidelity Insurance	<hr/> \$
<input type="checkbox"/>	B (10) Umbrella or Excess Liability (if required to meet liability limits above)	<hr/> \$
<input type="checkbox"/>	B (11) Property Insurance	<hr/> \$

<input type="checkbox"/> B (12) Cyber Security Liability Insurance (per occurrence or claim) (Aggregate)	\$ \$
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7.27. INDEMNIFICATION

To the extent permitted by law, ARTIST does hereby assume liability for, and agrees to defend, with counsel acceptable to MTS, indemnify, protect, save and keep harmless **MTS, SDTI, SDTC, SD&AE, SD&IV** and its directors, officers, employees, agents and their respective successors and assigns from and against any and all liabilities, obligations, losses, damages, penalties, fines, claims, actions, suits, costs and expenses and disbursements including reasonable attorneys' fees and expenses (including allocated costs of MTS attorneys) of any kind and nature imposed in, asserted against, incurred or suffered by **MTS, SDTI, SDTC, SD&AE, SD&IV** or its directors, officers or employees or its successors and assigns by reason of damage, loss or injury (including death) of any kind or nature whatsoever to persons or property in any way relating to or arising out of:

- (i) any acts, errors or omissions by ARTIST or any of its officers, agents, servants, employees, subconsultants of any tier in its or their performance hereunder, whether or not caused by MTS's negligence, but not to the extent of MTS's sole negligence or willful misconduct; or
- (ii) any claim of patent or copyright infringement in connection with the services performed or work products provided under this Contract by ARTIST or any of its officers, agents, servants, employees, subcontractors or subcontractors of any tier; or
- (iii) a release by ARTIST or any of its officers, agents, servants, employees, subcontractors or subcontractors of any tier in its or their performance hereunder of any substance or material defined or designated as a hazardous or toxic substance, material or waste by any federal, state or local law or environmental statute, regulation or in effect when the release occurs, or as amended or promulgated in the future, but only to the extent based upon principles of comparative fault that such release is not proximately contributed to or caused by MTS, or its directors, officers or employees; and/or
- (iv) successful efforts to enforce this indemnity provision.

The parties will establish procedures to notify the other party where appropriate of any claims, administrative actions or legal actions with respect to any of the matters described in this indemnification provision. The parties will cooperate in the defense of such actions brought by others with respect to the matters covered in this indemnity. Nothing set forth in this Contract will establish a standard of care for, or create any legal rights in, any person not a party to this Contract.

In addition to any other remedy authorized by law, MTS may retain as much of the money due ARTIST under this Contract as it considers necessary until disposition has been made of any claim for damages.

The foregoing requirements are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by ARTIST pursuant to this Contract, including, but not limited to, the provisions concerning insurance.

7.28. CONFLICT OF INTEREST

During the term of this Contract, ARTIST, its officers, employees and their immediate families may not acquire any interest, direct or indirect, that would conflict with the performance of services required to be performed under this Contract. Violation of this prohibition is a material breach of this Contract and MTS will have the right to debar ARTIST from participating at any tier in any MTS contract for a period of up to 5 years.

ARTIST covenants that prior to award of this Contract, ARTIST has disclosed in writing to the MTS General Counsel any present interest and any interest existing within 12 months prior to award of this Contract including, without limitation, any business or personal relationship that creates an appearance of a conflict of interest. Disclosable interests and relationships are those that may reasonably be viewed as creating a potential or actual conflict of interest. In addition, ARTIST must immediately disclose in writing to the MTS General Counsel any interest or relationship described above acquired or occurring after ARTIST's initial disclosure. Violation of the above disclosure obligations is a material breach of this Contract.

7.29. TERMINATION FOR CONVENIENCE

After MTS issues Notice to Proceed, MTS may terminate this Contract by giving 5 days' advance written notice to ARTIST. Upon termination of the Contract under this Article, ARTIST will be paid for all actual services rendered to MTS to and inclusive of the specified date of termination. If MTS terminates this Contract for convenience before issuance of Notice to Proceed to fabricate the Artwork, MTS will not be obligated to make any payment to ARTIST. All designs, materials, finished and unfinished portions of the Artwork, and written documents pertaining to the Artwork under this Contract, will remain the property of ARTIST. Within 30 days after issuance of the notice of termination, ARTIST must remove all finished or unfinished portions of the Artwork and restore the Artwork site to its prior condition. If ARTIST fails to remove his or her personal property and restore the Artwork site, MTS may do so at ARTIST's expense.

7.30. TERMINATION FOR BREACH

Either party may terminate this Contract immediately following written notice if the other party is in default as to any of its material obligations hereunder, provided that: (a) the defaulting party has received a written notice containing a reasonably complete description of the default; and (b) the defaulting party has failed to cure the default within 30 calendar days after receiving such notice; provided that if such failure is capable of cure but cannot be cured during such 30-day period, no event of default may occur so long as the defaulting party is diligently attempting to cure and does so within such additional period of time as is approved in writing by the non-defaulting party. If MTS terminates for breach, ARTIST will only be paid its fees and costs for services performed, as of the effective date of termination, in accordance with the terms and conditions of this Contract. MTS reserves the right to offset the damages it incurs as a result of ARTIST's breach against any payments owed to ARTIST. The foregoing remedy is cumulative and is in addition to any right or remedy that MTS may have in law or equity.

If, after termination for failure to fulfill contract obligations, it is determined that ARTIST was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for MTS's convenience.

7.31. NOTICES

All notices and other communications under this Contract must be in writing and will be deemed to have been duly given (i) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by email directed to the party to whom notice is to be given at the email address listed below, or (ii) at the earlier of actual receipt or the second business day following deposit in the United States mail, postage prepaid. Notices and other communications must be directed to the parties at the addresses shown below. A party may change its person designated to receive notice, its email address, or its address from time to time by giving notice to the other party in accordance with the procedures set forth in this Article.

TO MTS: San Diego Metropolitan Transit System
Attn:
Phone:
Email:

TO ARTIST:

7.32. PREVAILING WAGES

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

LABOR

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

Prevailing Rates of Wages: The ARTIST is aware of the requirements of Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the

Prevailing Wage Laws, and since the total compensation is \$1,000 or more, ARTIST agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov. In the alternative, the Contractor may view a copy of the prevailing rate of per diem wages which are on file at MTS's Administration Office and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the ARTIST's principal place of business and at the Project site. Contractor shall defend, indemnify and hold MTS, its Board, members of the Board, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.

The ARTIST shall forfeit as a penalty to MTS not more than Two Hundred Dollars (\$200.00), pursuant to Labor Code Section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for any public work done under the Contract by it or by any subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the ARTIST.

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

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

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

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

In the event of noncompliance with the requirements of this Section, the ARTIST shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the ARTIST must comply with this section. Should noncompliance still be evident after

such 10-day period, the ARTIST shall pay a penalty of one hundred dollars (\$100.00) to MTS for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.

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

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

Labor Certification I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract code.

7.33. WATER QUALITY MANAGEMENT AND COMPLIANCE

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

- C. Standard of Care. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in this section. Contractor further warrants that it, its employees and subcontractors have or will receive adequate training, as determined by MTS, regarding these requirements as they may relate to the services.
- D. Liability for Non-compliance.
1. Indemnity: Failure to comply with laws, regulations, and ordinances listed in this section may constitute a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Contractor agrees to indemnify, defend and hold harmless MTS, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which MTS, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of MTS, its officials, officers, agents, employees or authorized volunteers. Contractor is solely liable for any administrative or civil enforcement action arising from Contractor's failure to comply with the laws, regulations, and ordinances listed in this section and must pay any monetary penalty, fine, or damages associated with such action.
 2. Defense: MTS reserves the right to defend any enforcement action or civil action brought against MTS for Contractor's failure to comply with any applicable water quality law, regulation, or policy. Contractor hereby agrees to be bound by, and to reimburse MTS for the costs associated with, any settlement reached between MTS and the relevant enforcement entity.
 3. Damages: MTS may seek damages from Contractor for delay in completing the services caused by Contractor's failure to comply with the laws, regulations and policies described in this section, or any other relevant water quality law, regulation, or policy.

7.34. NONDISCRIMINATION

In accordance with applicable federal and state laws and regulations, ARTIST agrees that it will not discriminate against any employee, applicant for employment, or subcontractor because of race, color, religion, creed, ancestry, national origin, sex, marital status, age, medical condition, gender, gender identity, gender expression, genetic information or physical or mental disability.

7.35. SUBCONTRACTORS

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

7.36. PROMPT PROGRESS PAYMENT AND RETENTION

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

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

7.37. RECORDS RETENTION

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

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

MTS encourages the participation of DBEs, minority owned businesses (MBEs), women owned businesses (WBEs), disabled veteran business enterprises (DVBEs) lesbian gay bisexual transgender businesses (LGBTs), and small businesses (SB) in the performance of all of its contracts. MTS encourages the Contractor to outreach to DBEs and other small business enterprises for any potential subcontracting opportunities on this project. MTS tracks DBE, MBE, WBE, DVBE, PDBE, LGBT and SB participation and therefore requires all successful proposers to report whether the prime contractor and any subcontractors are a DBE or other small business enterprise. Contractor must complete MTS's Designation of Subcontractors and DBE Program -

Information for MTS's Bidder List. If interested in learning about bonding or financial assistance that may be available for small businesses, visit www.sba.gov. If interested in learning about the eligibility requirements to become certified as a DBE, PDBE, MBE, WBE, DVBE, LGBT or SB or how to view a list of certified firms, please contact MTS's DBE Liaison Officer, Samantha Leslie, at DBEProgram@sdmts.com for more information.

7.39. EQUAL EMPLOYMENT

A. MTS'S EQUAL EMPLOYMENT OPPORTUNITY PROGRAM:

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

B. CONTRACTOR'S EQUAL EMPLOYMENT OPPORTUNITY PLAN:

Each Contractor who provides MTS labor, equipment, materials and services of \$50,000 or more per year with fifty (50) or more employees shall have, maintain, and submit an Equal Employment Opportunity Plan to the Director of Human Resources and Labor Relations for MTS each year of the contract, and a Workforce Utilization Report on or before January 1 and July 1 for each year of the contract. The objective of this plan is to assure that the Contractor will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, sexual orientation, gender identity, religion, disability, age or status as a parent. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

C. COMPLIANCE WITH REGULATIONS:

Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; Comply with federal transit law, specifically 49 U.S.C. § 5332; FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients,"; and Follow any other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination.

7.40. ROADWAY WORKERS PROTECTION (RWP) TRAINING

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

found online at: <http://www.sdmts.com/Business/RAILSAFETYTRAINING.htm>. Any costs related to RWP training courses shall be at the sole expense of the Contractor.

7.41. FLAGGING

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

7.42. GRANT CONDITIONS

This Contract is subject to a financial assistance contract between MTS and the United States of America, acting through the Department of Transportation and the Federal Transit Administration (hereinafter "FTA"), as well as Clean California Local Grant Program ("CALTRANS"). If FTA or CALTRANS requires any change to this Contract to comply with its requirements, both parties agree to amend this Contract as required by FTA or CALTRANS. If such changes cause an increase or decrease in the work to be performed by the ARTIST or the time for such performance, then the compensation to be paid to ARTIST and time of performance will be equitably adjusted.

7.43. ARBITRATION

If any matter is to be submitted to the Arts and Mediation Services of the California Lawyers for the Arts, all fees expenses and costs connected therewith will be borne jointly and equally by MTS and ARTIST. Each and every obligation under this Contract to submit any matter in dispute to a third party for resolution is conditioned upon the foregoing provision of this Article. If any matter is to be submitted to the Arts and Mediation Services of the California Lawyers for the Arts for resolution pursuant to this Contract, and if, at the time of submission such organization is no longer in existence, or is not able or willing to provide such resolution service, then the matter will be submitted for resolution to the American Arbitration Association or such other organization to which both parties mutually agree. Unless the parties agree otherwise, the arbitration procedures to be used for resolving the dispute will be those current procedures adopted by the applicable arbitration board.

7.44. ASSIGNMENT OF WORK

The services provided pursuant to this Contract may not be assigned by ARTIST unless approved in writing by MTS. If ARTIST is not available to perform the terms of the Contract, MTS may at its election terminate the Contract for convenience or cancel the Contract for breach by giving notice as set forth herein.

7.45. SUCCESSORS AND ASSIGNS

This Contract will be binding upon and the benefits of this Contract will inure to the successors and assigns of the parties hereto, subject to the provisions of Article 37 above.

7.46. GOVERNING LAW

The interpretation and enforcement of this Contract is governed by the laws of the State of California, the state in which this Contract was signed. The parties agree to submit any disputes not subject to arbitration arising under the Contract to a court of competent jurisdiction located in San Diego, California.

7.47. NONWAIVER

Waiver of any breach or default hereunder does not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Contract.

7.48. MODIFICATION

No waiver, alteration, modification, or termination of this Contract will be valid unless made in writing and signed by the authorized parties hereof.

7.49. AMBIGUITIES

The parties have each carefully reviewed this Contract and have agreed to each term of this Contract. ARTIST acknowledges that he or she has been encouraged to retain his or her own attorney for the purposes of reviewing this Contract before signing it. No ambiguity is presumed to be construed against either party.

7.50. COUNTERPARTS

This Contract may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute but one and the same instrument.

7.51. SEVERABILITY

If any term, covenant, or condition of this Contract is held by a court of competent jurisdiction to be invalid, the remainder of this Contract will remain in effect.

7.52. SURVIVAL

All warranties, indemnities and waiver of rights contained in this Contract will survive the expiration, termination or cancellation of this Contract.

7.53. ENTIRE AGREEMENT

All warranties, indemnities and waiver of rights contained in this Contract will survive the expiration, termination or cancellation of this Contract.

8. FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

As a Federal Transit Administration (FTA) grantee, the San Diego Metropolitan Transit System (MTS), a California Public Agency, is required to inform the Contractor and any Subcontractor of the following information:

8.1. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MTS requests which would cause MTS to be in violation of the FTA terms and conditions.

8.2. FEDERAL CHANGES

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement between MTS and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor shall also ensure compliance by subcontractors at any tier of any applicable change to federal requirements.

8.3. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

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 Contractor or any other party (whether or not a party to that contract) 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 the FTA.

8.4. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Contract. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or

causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

False Claims Act (*APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS*)

The Contractor and any Subcontractor acknowledges that the False Claims Act, 31 U.S.C. 3729 et seq., pertains to the underlying contract or the FTA assisted project for which this contract work is performed. If the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA, or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance, the Contractor must notify MTS, U.S. DOT Inspector General, and the FTA Chief Counsel or FTA Region 9 Counsel. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

Notice to FTA on Legal Matters (*APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING \$25,000*)

The Contractor and any Subcontractor shall notify MTS and the FTA Chief Counsel or FTA Region 9 Counsel if a current or prospective legal matter that may affect the Federal Government emerges. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in an award of federal funding, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

8.5. DEBARMENT AND SUSPENSION

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING \$25,000)

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. Contractor

shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be: a) Debarred from participation in any federally assisted Award; b) Suspended from participation in any federally assisted Award; c) Proposed for debarment from participation in any federally assisted Award; d) Declared ineligible to participate in any federally assisted Award; e) Voluntarily excluded from participation in any federally assisted Award; or f) Disqualified from participation in any federally assisted Award. The Contractor agrees to include a provision requiring compliance to this section in its lower tier covered transactions.

8.6. RESTRICTIONS ON LOBBYING

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING \$100,000)

The Contractor and their subcontracts at every 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 or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. The Contractor and their subcontracts at every tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

8.7. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING \$150,000)

The Contractor and any Subcontractor agrees: 1) It will not use any violating facilities; 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;” 3) It will report violations of use of prohibited facilities to FTA; and 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

8.8. ENERGY CONSERVATION

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The Contractor and any Subcontractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq and 49 C.F.R. part 622, subpart C.

8.9. FLY AMERICA REQUIREMENTS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS TRANSPORTING PERSONS OR PROPERTY BY AIR OUTSIDE THE U.S.)

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use

a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

8.10. ENVIRONMENTAL PROTECTIONS

(APPLICABLE TO ALL CONTRACTS)

8.12.1. GENERAL

Contractor agrees to comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

8.12.2. NATIONAL ENVIRONMENTAL POLICY ACT

An Award of federal assistance requires the full compliance with applicable environmental laws, regulations, and requirements. Accordingly, the Contractor agrees that it will: (1) Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: (a) Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139, (b) The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508, (c) Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622, (d) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note, and (e) Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto. (2) Follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation: (a) Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013, (b) Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006, and (c) Other federal environmental guidance applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.

8.12.3. ENVIRONMENTAL JUSTICE

Contractor agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, (2) U.S. DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

8.12.4. OTHER ENVIRONMENTAL FEDERAL LAWS

Contractor agrees that it will comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not

limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management."

8.12.5. USE OF CERTAIN PUBLIC LANDS

Contractor agrees it will comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.

8.12.6. HISTORIC PRESERVATION

The Contractor agrees that it will: (1) Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places. (2) Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108. (3) Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq. (4) Comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 C.F.R. part 800. (5) Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.

8.12.7. INDIAN SACRED SITES

The Contractor agrees that it will facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, "Indian Sacred Sites," May 24, 1996, 42 U.S.C. § 3161 note.

8.11. ADA ACCESS

(APPLICABLE TO ALL CONTRACTS)

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794; 49 USC Section 5301(d)., which prohibit discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act.

8.12. CIVIL RIGHTS

(APPLICABLE TO ALL CONTRACTS)

8.14.1. SUBCONTRACT

The Contractor shall include these requirements in each subcontract entered into as part thereof.

8.14.2. NONDISCRIMINATION

In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, gender identity, sexual orientation, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

8.14.3. RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

8.14.4. AGE

In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

8.14.5. DISABILITIES

In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § A-27 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

8.13. VETERANS EMPLOYMENT

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

8.14. EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

Apart from inconsistent requirements imposed by federal statute or regulations, MTS shall comply with the requirements of 49 U.S.C. § 5323 (h)(2) by refraining from using any federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

8.15. CONTRACTOR ASSURANCE

(APPLICABLE TO ALL CONTRACTS)

The Contractor and Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of 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 MTS deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph.

8.16. CARGO PREFERENCE

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS INVOLVING EQUIPMENT, MATERIALS, OR COMMODITIES WHICH MAY BE TRANSPORTED BY OCEAN VESSELS)

- A. 46 U.S.C. 55305 and 46 C.F.R. Part 381 which imposes U.S. cargo preference requirements on the shipment of foreign made goods shall apply to this procurement. The Contractor shall utilize privately owned United States-flagged commercial vessels to ship at least 50 percent of the gross tonnage (competed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flagged commercial vessels.
- B. The Contractor shall furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (A) above to MTS (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the project.

- C. The Contractor shall insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material or commodities by ocean vessel.

8.17. SAFE OPERATION OF MOTOR VEHICLES

(APPLICABLE TO ALL CONTRACTS)

8.20.1. SEAT BELT USE

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or MTS.

8.20.2. DISTRACTED DRIVING

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract. The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

8.18. DOMESTIC PREFERENCES FOR PROCUREMENTS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

8.19. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(APPLICABLE TO ALL CONTRACTS)

In accordance with 2 CFR part 200.216, Contractor and its subcontractors are prohibited from expending funds under this Contract to: procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation

(or any subsidiary or affiliate of such entities). This includes: for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); telecommunications or video surveillance services provided by such entities or using such equipment; and telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

8.20. [NOT APPLICABLE] CONTRACT WORK HOURS AND SAFETY STANDARDS FOR AWARDS

8.21. RECYCLED PRODUCTS

(APPLICABLE TO OPERATIONS, CONSTRUCTION AND GOODS CONTRACTS AND SUBCONTRACTS INVOLVING ITEMS DESIGNATED BY THE EPA, WHERE THE PURCHASE PRICE OF THE ITEM EXCEEDS \$10,000 OR THE VALUE OF THE QUANTITY ACQUIRED DURING THE PRECEDING FISCAL YEAR EXCEEDED \$10,000)

The Contractor and any Subcontractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the State Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247. The requirements of Section 6002 include procuring only items designated in guidelines of the U.S. EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

8.22. [NOT APPLICABLE] TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENT

8.23. [NOT APPLICABLE] SCHOOL BUS OPERATIONS

8.24. [NOT APPLICABLE] MOTOR CARRIER SAFETY

8.25. [NOT APPLICABLE] DRUG AND ALCOHOL TESTING REQUIREMENTS

8.26. [NOT APPLICABLE] PRIVACY ACT REQUIREMENTS

8.27. [NOT APPLICABLE] CHARTER SERVICE

8.28. [NOT APPLICABLE] BUY AMERICA

(APPLICABLE TO PURCHASE OF MORE THAN \$150,000 OF IRON, STEEL, MANUFACTURED GOODS, ROLLING STOCK, OR CONSTRUCTION MATERIALS)

The Contractor's attention is directed to the "Buy America" requirements set forth in Section 165 of the federal Surface Transportation Act of 1982, Section 70914 of the Infrastructure Investment Jobs Act, Pub. L. No. 117-58, which includes the Build America, Buy America Act (Section 70914 of the Infrastructure Investment Jobs Act), and the FTA regulations implementing Section 165 (49 C.F.R. Part 661). Information on "Buy America" requirements is available for review upon request. Contractor agrees to comply with 49 U.S.C. 5323(j), as amended by the FAST Act, FTA regulations 49 C.F.R. Part 661, and Section 70914 of the Infrastructure Investment Jobs Act, which provide that Federal funds may not be obligated unless steel, iron, manufactured products, and construction materials used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. See 49 C.F.R. 661.7 and Section 70914 of the Infrastructure Investment Jobs Act regarding general waivers. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 70 percent domestic content. Contractor shall submit to MTS with its Bid/Proposal the appropriate Buy America certification included as part of the Bid/Proposal Documents and Forms, except those subject to a general waiver. MTS will reject as nonresponsive Bids/Proposals or offers that are not accompanied by a completed Buy America certification. This requirement does not apply to lower tier subcontractors

8.29. [NOT APPLICABLE] AIR POLLUTION AND FUEL ECONOMY

8.30. [NOT APPLICABLE] BUS TESTING

8.31. [NOT APPLICABLE] PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS

9. Required Third Party Contract Clauses

As a Clean California Local Grant Program (CALTRANS) grantee, the San Diego Metropolitan Transit System (MTS), is required to inform the Contractor and any Subcontractor of the following information. In the event there are similar clauses between these CALTRANS provisions, and the terms of this Contract, including any Federal Transit Administration (FTA) clauses, Contractor and any Subcontractor shall comply with both to the extent possible. If there is a conflict between provisions that would result in the Contractor not complying with one or more provisions, contact MTS staff for further direction. 1.

1. Cost Principles:

The Contractor and its subcontractors agrees that Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual Project cost items. Contractor and any of its subcontractors also agrees to comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, to the extent applicable.

Contractors and its subcontractors also shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line. Contractors and any of its subcontractors agree to comply with Generally Accepted Accounting Principles (GAAP), to enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

1. Nondiscrimination

Contractors and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

Contractors and its subcontractors shall also give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

The Contractor agrees to include the above clause in each subcontract.

2. Mandatory Organic Waste Recycling

Pursuant to Public Resources Code Sections 42649.8 et seq., if Contractor generates two (2) cubic yards or more of organic waste or commercial solid waste per week in performance of this Contract, Contractor shall arrange for organic waste or commercial waste recycling services that separate/source organic waste for organic waste recycling. Contractor shall provide MTS proof of compliance, i.e., organic waste recycling services or commercial waste recycling services that separate/source organic waste recycling.

3. Record Retention

Contractors and any of its subcontractors shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of this

Contract, including, but not limited to, the costs of administering those various contracts. Materials shall be available at their respective offices at all reasonable times during the entire Project period and for three (3) years from the date of final payment to MTS under this Contract. CALTRANS, the California State Auditor, or any duly authorized representative of CALTRANS or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to a Project for audits, examinations, excerpts, and transactions.

All accounting records and other supporting papers connected with Project performance shall be maintained for a minimum of three (3) years from the date of final payment to MTS and shall be held open to inspection, copying, and audit by representatives of CALTRANS, the California State Auditor, and auditors representing the federal government. Copies thereof will be furnished upon receipt of any request made by CALTRANS or its agents.

Contractor and any subcontractors shall permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records to the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by CALTRANS.

The Contractor agrees to include the above clause in each subcontract.

4. Travel Reimbursements

If applicable and if expressly authorized by MTS within the Contract, travel and per diem reimbursements of Contractor and its subcontractors, will be allowable as Project costs only after those costs are incurred and paid for.

Travel expenses and per diem rates are not to exceed the rate specified by the State of California Department of Human Resources for similar employees (i.e. non-represented employees) unless written verification is supplied that government hotel rates were not then commercially available to Contractor and its subcontractors, at the time and location required as specified in the California Department of Transportation's Travel Guide Exception Process at the following link:

<https://travelpocketguide.dot.ca.gov/>.

5. Educational Programming

If applicable, Contractor shall provide MTS a sublicensable, irrevocable, perpetual, royalty-free, unlimited, worldwide license to prepare derivative works, make, publish, display, and distribute two-dimensional reproductions and/or copies, digitally and in print, of the educational programming created or produced for this Contract, or derivatives thereof, for non-commercial purposes or any State government purposes. This includes, but is not limited to, reproductions used in brochures, media publicity, public outreach campaigns (including television and social media campaigns), education, exhibition catalogues or other similar publication. Contractor shall provide MTS any and all other intellectual property rights necessary.

To the extent any logos, including trademarks or service marks, are used on educational programming created or produced for this Contract, Contractor agrees to grant MTS and Caltrans all necessary rights to use and allow agents of CALTRANS to use the logos in connection with use of the educational programming for non-commercial purposes or State government purposes. This includes but is not limited to reproductions used in brochures, media publicity, public outreach campaigns (including television and social media campaigns), education and exhibition catalogues or other similar publication.

Contractor must place a disclaimer statement in a conspicuous manner on the educational programming created or produced for this Contract a disclaimer that states the content of the educational programming does not reflect the official views or policies of MTS or CALTRANS. The educational programming does not constitute a standard, specification, or regulation.

6. Artwork

If applicable, Contractor, or any other copyright owner(s) of Artwork, shall grant MTS and CALTRANS a sublicensable, irrevocable, perpetual, royalty-free, unlimited, worldwide license to prepare derivative works, make, publish, display, and distribute two-dimensional reproductions and/or copies, digitally and in print, of Artwork created or produced for Project under this RGA, or derivatives thereof, for non-commercial purposes or any State government purposes. This includes, but is not limited to, reproductions used in brochures, media publicity, public outreach campaigns (including television and social media campaigns), education, and exhibition catalogues or other similar publication. Contractor shall grant MTS any and all other intellectual property rights necessary.

Contractor must place a disclaimer statement in a conspicuous manner on or in close proximity to the Artwork created or produced for this Contract a disclaimer statement that the contents of the artwork do not reflect the official views or policies of MTS or CALTRANS.

7. Government Purpose Rights for Inventions

Inventions are any idea, methodologies, design, concept, technique, invention, discovery, improvement, or development regardless of patentability made solely by Contractor and its subcontractors in performance of any work and during the term under this Contract. If applicable, Contractor and its subcontractors shall provide MTS and CALTRANS Government Purpose Rights to any inventions created as a result of the Contract. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights, and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose any said invention. "Government Purpose Rights" also include the right to release or disclose said invention(s) outside MTS and CALTRANS for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the invention(s) for any State government purpose. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the invention(s) for any commercial purpose.

8. Intellectual Property

If applicable, Contractor and any subcontractors shall grant the rights necessary to MTS and CALTRANS to allow for use of the intellectual property in a fashion similar to other rights for non-commercial uses and State government purposes.

If additional uses are reasonably determined to be needed for public outreach purposes, Contractor shall grant MTS and CALTRANS obtain rights and grant its agents said additional rights for use of the "Before" and "After" Project photos, Artwork created or produced for this Contract, and educational programming created or produced for this Contract. The grant will be an irrevocable, non-exclusive, perpetual, royalty-free, sublicensable, unlimited, worldwide license. As requested by MTS, all reproductions and/or copies of "Before" or "After" Project photographs, educational programming, and Artwork shall contain a credit to the Artist/ Copyright owner(s) and a copyright notice in substantially the following form: © [Artist/Copyright owner's name, date of publication].

In performing services under this Contract, Contractor and its Subcontractor shall agree to avoid designing or developing any items that infringe one (1) or more patents or other intellectual property rights of any third party. If Contractor and its Subcontractors becomes aware of any such possible infringement in the course of performing any work under this RGA, immediate notification to MTS in writing is required.

10. FORMS

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

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

1. Contact Information Form
2. Cost/Pricing Forms
3. Designation of Subcontractors
4. DBE Program - Information for MTS's Bidder List
5. Certification Regarding Debarment, Suspension and Other Ineligible and Voluntary Exclusions
Lower-Tier Covered Transactions Contractor and Subcontractor's Statement of Eligibility Form and Questionnaire
6. Equal Opportunity Program Workforce Report
7. Equal Opportunity Program Workforce Report Continued
8. Status of Current and Past Contracts Form
9. Financial Questionnaire Form
10. California Public Records Act Acknowledgement Form
11. Non-collusion Declaration Form
12. Iran Contracting Act Certification Form
13. Safety Department Standard Operating Procedures and Form
14. Public Works Contractor Registration Certification Form
15. Sample Prompt Payment Certification Form
16. Buy America Form
17. Certification of Restrictions on Lobbying Form
18. Addenda Acknowledgement Form

CONTACT INFORMATION

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

Company Information:

The Official, Legal Name of Proposing Firm:

Doing Business As:

Legal Structure (Corp./Partner/Proprietor):

Company Mailing Address:

Street

City

State

Zip

Person Authorized to sign:

Point of Contact:

Title:

E-Mail Address:

Phone Number:

Accounts Receivable

Point of Contact:

Title:

E-Mail Address:

Phone Number:

COST/PRICING FORM

Refer to Attachment: ATT 1 Cost Pricing Form

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

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

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

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

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

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

DESIGNATION OF SUBCONTRACTORS

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

Subcontractor 1

Company Name:

Contractor License or Certificate Number

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

% of Work:

Department of Industrial Relations (DIR)
Number:

Point of Contact

Email:

Phone Number:

Address:

Street

City

State

Zip

Description of Work:

RETURN THIS FORM WITH YOUR BID

COPY THIS FORM IF NEEDED FOR ADDITIONAL SUBCONTRACTORS.

Subcontractor

Company Name:

Contractor License or Certificate Number

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

% of Work:

Department of Industrial Relations (DIR)
Number:

Point of Contact

Email:

Phone Number:

Address:

Street

City

State

Zip

Description of Work:

DBE PROGRAM – INFORMATION FOR MTS’S PROPOSAL LIST

This information will be maintained in MTS’s proposer list. The purpose for maintaining a proposer list is to derive data on the relative availability of DBEs in the local market. MTS may use this data in the future to help set MTS’s overall DBE participation goals.

INSTRUCTIONS: Each prime contractor and each subcontractor bidding is **required** to complete this form as part of their bid/proposal.

1. What is your company’s name? _____
 2. What is your company’s address? _____
 3. What type of work does your company perform ?
(list NAICS Codes if known) _____
- Is your company a certified DBE PDDBE, WBE, DVBE, SB or LGBT? If yes, please check the applicable box and state the corresponding certification number.
- | | |
|--------------------------------|-------------------------------|
| <input type="checkbox"/> DBE | <input type="checkbox"/> DVBE |
| <input type="checkbox"/> MBE | <input type="checkbox"/> SB |
| <input type="checkbox"/> WBE | <input type="checkbox"/> LGBT |
| <input type="checkbox"/> PDDBE | |
5. How many years has your company been in business? _____
 6. What are the annual gross receipts of your company
(please check the applicable bracket)?
- | |
|---|
| <input type="checkbox"/> Less than \$1,000,000 |
| <input type="checkbox"/> \$1,000,001 – \$15,000,000 |
| <input type="checkbox"/> \$15,000,001 - \$26,290,000* |
| <input type="checkbox"/> \$26,290,001– \$50,000,000 |
| <input type="checkbox"/> \$50,000,001 - \$100,000,000 |
| <input type="checkbox"/> Greater than \$100,000,000 |

*The DOT annually decides the amount of average annual gross receipts a firm must have to be eligible to become a DBE. Currently, if your company in the previous 3 fiscal years has had average annual gross receipts below \$26,290,000, your company may be eligible for DBE Certification. To learn more about DBE certification, visit <https://dot.ca.gov/programs/civil-rights/dbe-certification-information> *

ACKNOWLEDGED AND AGREED

SUBCONTRACTOR

(Copy this form if needed for additional subcontractors)

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

PRIME CONTRACTOR

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

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

CONTRACTOR AND SUBCONTRACTOR'S STATEMENT OF ELIGIBILITY

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

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

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

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

QUESTIONNAIRE

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

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

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

SUBCONTRACTOR

(Copy this form if needed for additional subcontractors)

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

PRIME CONTRACTOR

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

ACKNOWLEDGED AND AGREED

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

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

EQUAL OPPORTUNITY PROGRAM WORKFORCE REPORT

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

COMPLETE ALL SECTIONS OF THIS FORM:

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

Street

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

Street

City State Zip

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

ACKNOWLEDGED AND AGREED

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

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

City State Zip

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

EQUAL OPPORTUNITY PROGRAM WORKFORCE REPORT CONTINUED

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

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

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

ETHNIC IDENTIFICATION

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

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

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

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

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

DISABLED DEFINITION

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

OCCUPATIONAL CATEGORY LIST

Executive/Managerial

Executive, Management Related

Engineers/Architects/Surveyors

Professionals (N.E.C.)*

Mathematical and Computer Scientists

Natural Scientists

Health Diagnosing

Health Assessment and Treating

Teachers, Postsecondary

Teachers, except Postsecondary

Counselors, Educational and Vocational

Librarians, Archivists, Curators

Social Scientists and Urban Planners

Social, Recreation and Religious Workers

Lawyers and Judges

Writers, Artists Entertainers & Athletes

Technicians

Health Technologists and Technicians

Engineering and Related Technologists and Technicians

Science Technicians

Technicians, Except Health, Engineering, and Service

Sales

Supervisors and Proprietors

Sales Representatives, Finance, and Business

Services

Sales Representatives, Commodities except Retail

Sales Workers, Retail, and Personal Services

Other Sales Related

Administrative Support

Supervisors of Administrative Support

Computer Equipment Operators

Secretaries, Stenographers, Typists

Information Clerks

Records Processing, Except Financial

Financial Records Processing

Duplicating and Other Office Machine Operators

Communications Equipment Operators

Mail and Message Distributing

Material Recording and Distributing Clerks

Adjusters and Investigators

Other Office/Clerical

*N.E.C.: Not Elsewhere Classified

Protective Services

Supervisors of Protective Services

Firefighting and Fire Prevention

Police and Detectives

Guards & Other Protective Services

Services (N.E.C.)*

Private Households

Food Preparation and Services

Health Services

Cleaning and Building Services

Personal Services

Craft Workers (Skilled)

Supervisors of Mechanics and Repairers

Vehicle and Mobile Equipment Mechanics and Repairers

Heating, Air Conditioning, Refrigeration, Mechanics

Other Mechanics and Repairers

Supervisors of Construction Trades

Construction Trades, Except Supervisors

Extractive Occupations

Precision Production Occupations

Machine Operators, Assemblers & Inspectors

Metalworking and Plastic Working Machine Operator

Metal and Plastic Processing Machine Operators

Woodworking Machine Operators

Printing Machine operators

Textile, Apparel, and furnishing Machine Operators

Machine Operators, Assorted Materials

Fabricators, Assembler and Hand Working Occupations

Production Inspector, Tester, Sampler, Weigher

Transportation and Material Moving

Motor Vehicle Operators

Rail Transportation Occupations

Water Transportation Occupations

Material Moving Equipment Operators

Laborers (Unskilled)

Handlers

Equipment Cleaners

Helpers & Laborers

STATUS OF CURRENT AND PAST CONTRACTS

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

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

REFERENCE NO.1

Company Name: _____
Point of Contact: _____
Phone: _____
Email: _____
Project Award Date: _____
Original Contract Value: _____
Status of Contract: _____

A. Terms and Scope of Contract

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

REFERENCE NO.2

Company Name:

Point of Contact:

Phone:

Email:

Project Award Date:

Original Contract Value:

Status of Contract:

A. Terms and Scope of Contract

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

REFERENCE NO.3

Company Name:

Point of Contact:

Phone:

Email:

Project Award Date:

Original Contract Value:

Status of Contract:

A. Terms and Scope of Contract

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

FINANCIAL QUESTIONNAIRE FORM

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

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

Name of Bank: _____

Address: _____

Street

City, State, Zip

Telephone: _____

Officer Familiar with Proposer's
Account: _____

3. Business License

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

Proposer's Business License No.: _____

Original Date Issued: _____

Expiration Date: _____

Proposer's DUNS No.: _____

Expiration Date: _____

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

Expiration Date: _____

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

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

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

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

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

CALIFORNIA PUBLIC RECORD ACT (PRA) ACKNOWLEDGEMENT

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

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

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

ACKNOWLEDGED AND AGREED

Company Name: _____

Title: _____

Signature: _____

Date: _____

NONCOLLUSION DECLARATION

TO BE EXECUTED BY PROPOSER AND SUBMITTED WITH OFFER

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

The undersigned declares:

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

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

Any person executing this declaration on behalf of the proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____(date), at _____(city), _____(state).

ACKNOWLEDGED AND AGREED

Name of Contractor: _____

Signature: _____

Date: _____

IRAN CONTRACTING ACT CERTIFICATION

(Public Contract Code Section 2200 *et seq.*)

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

1. The Contractor is not:
 - a. identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
 - b. a financial institution that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.

2. MTS has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, MTS will be unable to obtain the goods and/or services to be provided pursuant to the Contract.

3. The amount of the Contract payable to the Contractor for the Project does not exceed \$1,000,000.

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

ACKNOWLEDGED AND AGREED

Company Name: _____
Title: _____
Signature: _____
Date: _____

SAFETY DEPARTMENT STANDARD OPERATING PROCEDURES

FOR CONTRACTORS SAFETY AND HEALTH REQUIREMENTS

(SAF 016-03)

January 2003

SAF 016-03

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

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

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

Objectives: This SOP requires all MTS Contractors to:

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

MTS Representatives are required to:

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

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

SAFETY DEPARTMENT SAFETY RULES

MTS Contractual Agreement with Outside Agencies

Work on MTS Premises

A. Safety Rules

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

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

B. Use of Tools and Equipment (when required)

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

C. Machinery and Vehicles (when required)

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

D. Contractor Requirements (when required)

1. Valid Contractor's license number.

ACKNOWLEDGED AND AGREED

Company Name: _____

Print Name: _____

Title: _____

Signature: _____

Date: _____

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATE FORM

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

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

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

Bidder further acknowledges:

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

PRIME CONTRACTOR

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

SAMPLE PROMPT PAYMENT CERTIFICATION FORM

SAN DIEGO METROPOLITAN TRANSIT SYSTEM PROMPT PAYMENT CERTIFICATION FORM

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

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

1. CONTRACTOR INFORMATION

Contractor Name: _____ Contract No. _____ Work Order No. _____

Telephone No. _____ Email Address _____

2. PAYMENT INFORMATION

a) Name of Subcontractor: _____

b) Type of Services or Materials Provided by Subcontractor (state NAICS code if known?): _____

c) Date Last Payment Received from MTS?: _____

d) Was any of that payment for services/materials provided by the subcontractor?: _____

* If YES, please answer questions e-h. If NO, proceed to Part 3 Certification.

e) Payment Amount: _____

f) Payment Date: _____

* Prime contractors must pay their subcontractors for satisfactory performance of their contracts no later than seven (7) days from receipt of payment from MTS

g) If payment was delayed or postponed over thirty (30) days, who at MTS pre-authorized the delay or postponement and when was such pre-authorization given?: _____

h) If payment was delayed or postponed over thirty (30) days, was the reason for good cause? (Explain): _____

3. CERTIFICATION

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

Signature _____ Title _____ Date _____

*** FOR MTS USE ONLY ***

Date Certification Received _____ Contractor Compliant _____

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

ALTERNATIVE A

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA REQUIREMENTS

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

ACKNOWLEDGED AND AGREED

Print Name: _____
Signature: _____
Date: _____

CERTIFICATE FOR NON-COMPLIANCE WITH BUY AMERICA REQUIREMENTS

ALTERNATIVE B

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

ACKNOWLEDGED AND AGREED

Print Name: _____
Signature: _____
Date: _____

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

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

CERTIFICATE OF RESTRICTIONS ON LOBBYING

The CONTRACTOR hereby certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
3. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Check one of the following Boxes.
Does NOT Apply
Applies

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

Executed this _____ day of _____, 20__.

ACKNOWLEDGED AND AGREED

Name of Contractor: _____
Signature: _____
Date: _____

ADDENDA ACKNOWLEDGEMENT FORM

Proposer acknowledges the receipt of the following Addenda:

<i>ADDENDUM</i>	<i>CHECK (✓) RECEIVED</i>	<i>DATE RECEIVED</i>	<i>ADDENDUM</i>	<i>CHECK (✓) RECEIVED</i>	<i>DATE RECEIVED</i>
ADDENDUM NO. 1			ADDENDUM NO. 4		
ADDENDUM NO. 2			ADDENDUM NO. 5		
ADDENDUM NO. 3			ADDENDUM NO. 6		

FIRM NAME: _____

ADDRESS: _____

TELEPHONE: _____ FAX: _____

PLEASE PRINT NAME OF INDIVIDUAL RESPONSIBLE FOR THE PREPARATION OF THIS PROPOSAL:

DATE: _____

PRINT NAME: _____

SIGNATURE OF PROPOSER: _____

(Sign Here)

TITLE: _____