



**REQUEST FOR PROPOSALS  
RFP # 09-05  
SPECIFICATIONS  
FOR  
MARINA AREA SERVICE STUDY  
(MASS)**

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## **SECTION 1 INTRODUCTION**

- 1.1 Monterey-Salinas Transit is requesting proposals from qualified offerors to perform the Marina Area Service Study.

### 1.1.1 Background

Monterey-Salinas Transit is a joint powers agency that provides fixed route, demand-response and special seasonal transit service to a 277 square mile area of Monterey County with connections to Santa Cruz County in Watsonville. MST operates thirty-nine routes within a service area comprised of an estimated 352,000 people and has a total of 84 buses in its active fleet, including six themed trolley-style buses. It operates through two major transit hubs in Monterey and Salinas as well as secondary hubs in Marina and at the Edgewater Shopping Center in Sand City. Annual boardings on the fixed route system total 4.8 million (FY 2008) and the annual operating budget for the fixed route system in FY 2008 is \$23.9 million. Of that amount, 38% comes from local funds. Federal sources fund 29% of the operating budget. Approximately 28% of the operating budget is generated from fares. The remaining 5% of the operating budget is comprised of other funding sources.

MST provides a variety of fixed-route services to meet the unique needs of the rural, small and medium-sized communities it serves. High frequency commuter services in Salinas, Monterey and Seaside complement local and neighborhood services in Pacific Grove, Carmel, Marina and Del Rey Oaks. Regional service connects citizens of Monterey County to Watsonville, Carmel Valley and South Monterey County and to a variety of other destinations and attractions. Fleet-wide, MST has installed the Siemens Transit Master Advanced Communication System technology, which monitors locational and operational data continuously via GPS. Buses are equipped with variable message signs and automated voice announcement technology. The TransitMaster system also allows MST to collect daily passenger boarding data on a stop-by-stop basis.

For the purposes of this study, the Marina area will be defined as the region along Military Avenue from the south extending north through CSUMB to North Marina, and from Hwy 1 on the coast extending east to the East Garrison community. Included in the study area are MST's Marina Transit Exchange and Edgewater Transit Exchange. According to the 2004 AMBAG Regional Population and Regional Forecast for the Monterey Peninsula study, it is expected that the city of Marina, unincorporated areas of the Fort Ord region, and the CSUMB campus will be experiencing a significant increase in population in the near future. In September 2008, the Strategic Development Center (SDC) of Marina Development Services Department predicts a gain of 11,000 new residents to the Marina area as well as 12,400 new jobs within the next ten to fifteen years. The SDC also forecasts 4,500 new housing units and 1,400 acres of land for redevelopment. A downtown vitalization plan is in progress as well as other large-scale development projects like the Airport Economic Development Area, Cypress Knolls, Marina Heights, Marina

Station, and The Dunes on Monterey Bay. Factors that affect population growth and ridership demand include housing supply, job opportunities and fuel prices. As the City of Marina and neighboring unincorporated areas experience continued growth in population and commercial development, a viable transportation solution is needed to address access and mobility issues. A comprehensive analysis of the transportation demands for the Marina area needs to be performed. MST is seeking assistance from a transportation consultant to conduct such a study.

Additional information about MST's services is available in our Short Range Transit Plan (SRTP). The SRTP is the primary planning document which guides the future direction of Monterey-Salinas Transit. The SRTP describes the services MST operates, highlights achievements during the past fiscal year, and describes the various issues the organization will face during the next three years. In addition, the SRTP identifies planned operating and capital projects and programs funds necessary for implementation of these activities. Electronic copies of MST's SRTP are available for download at the following website address:

<http://www.mst.org/news/items/srtpfiles2006.htm>

## SECTION 2 SCOPE OF WORK/SERVICES

### 2.1 STATEMENT OF SPECIFICATIONS OR SERVICES

#### 2.1.1 Objective

The Marina Area Service Study (MASS) is designed to evaluate how well MST's bus service in and around the Marina/CSUMB area is meeting passenger demand with regards to on-time performance, safety and convenience; to examine present and anticipated development and travel patterns; and to subsequently propose a series of new and adjusted bus routes that would better serve existing and future public transit customers as well as increase overall ridership.

#### 2.1.2 Technical Specifications

MST expects that the following tasks will be completed as part of the Marina Area Service Study. These tasks may be restructured in your detailed work plan, as long as the detailed work plan will result in achieving the project's objectives. Proposers are expected to expand upon these tasks and provide details as to how each task will be completed.

- 2.1.2.1. Initiate and Administer Study. The purpose of this task is to ensure that the Marina Area Service Study is conducted as efficiently as possible. A project kick-off meeting will be conducted and project personnel will be introduced to MST staff members.

This task also includes the ongoing project monitoring activities which must be conducted. The project manager shall provide oral reports on the status of the project to the MST Planning Manager every other week.

*Deliverable:* Written progress report shall be submitted monthly to the Planning Manager.

- 2.1.2.2 Collect and Analyze Data. Most of the data required to complete this project is already available. Data sources include, but are not limited to: Siemens Transitmaster Automated Communications Systems data/reports; Cubic electronic farebox data; National Transit Data Base typical daily ridership information; RIDES Program ridership reports; AMBAG (Association of Monterey Bay Area Governments) Three County Regional Model, census data; MST Rider's Guides. Relevant data will be collected and analyzed in this task. The consultant will design a survey instrument in English and Spanish and conduct a passenger survey. A detailed survey of Marina and CSUMB riders will be

conducted by surveying those lines that travel to, from or through the Marina/CSUMB area. At least 1,000 respondents should be tallied. Present and future employment centers and housing developments in the Marina area shall be identified.

In this task, the consultant also will meet with various stakeholders and obtain their views as to how MST's services in the Marina/CSUMB area could be improved. The consultant shall participate in one meeting of the Transportation Agency of Monterey County (TAMC) Social Services Transportation Advisory Committee (SSTAC) and any other community/governmental organizations consultant requires to adequately accomplish this task. The consultant also shall meet with representatives from AMBAG, TAMC and the Amalgamated Transit Union during this task.

*Deliverables:* Passenger survey instrument; electronic file of present and future employment centers and housing developments that is compatible with ArcView and/or Caliper Maptitude software.

2.1.2.3 Collect Additional Data. If the existing data is not adequate, additional data will be collected in this task. The data that is required should be identified and the method of collection should be discussed.

2.1.2.4 Identify Ways to Improve Existing Services. The purpose of this task is to conduct a detailed review of MST's existing lines that serve the Marina/CSUMB area and recommend ways to increase ridership with existing resources. The routes of the various lines provided by MST should be evaluated. In addition, interlining and coach assignment patterns should be reviewed. As part of this task, the following sub-tasks should be addressed: validate current route alignments; identify possible adjustments to current route alignments; identify possible route extensions; and identify new routes.

For each option considered, inter-lining patterns shall be identified and transfer opportunities at key transit exchanges shall be evaluated. Alternative (non-fixed route) service delivery methods including general public dial-a-ride, route deviation/flexroute, etc., can be considered where appropriate. A phasing plan for any proposed changes should be provided. Any increased costs that would result from the recommended changes must be specified. The anticipated impact on ridership as a result of these changes should be specified. In addition, maintaining compliance with the

Americans with Disabilities Act (ADA) complementary paratransit requirements must be considered.

*Deliverable:* The recommendations from this task shall be documented in a working paper, which will be provided to the project steering committee for review and comment.

2.1.2.5 *Prepare Draft Report.* In this task, the working paper will be incorporated into a draft report.

*Deliverable:* Six copies of the draft report shall be provided to MST for review and comment.

2.1.2.6 *Prepare Final Report.* Any changes to the draft report will be considered and incorporated into the final report as appropriate.

*Deliverables:* Twenty copies and an electronic file of the final report shall be provided. A PowerPoint presentation of the final report shall be made to the MST Board of Directors. An electronic copy of this presentation shall be provided to MST for subsequent presentations by MST staff to other advisory groups or policy boards.

### 2.2.3 Project Manager and Project Steering Committee

MST's Planning Manager will serve as MST's project manager for the Marina Area Service Study. The project steering committee will include: the General Manager/CEO, the Assistant General Manager of Administration and Finance, the Transit Services Manager, the Bus Operations Supervisor, the Schedule/Planning Analyst, the Contract Transportation Manager and the Planning Manager.

### 2.2.4 Project Schedule

The schedule for this project is as follows:

Issue of the RFP	November 3, 2008
Proposer Questions/Clarifications due	November 20, 2008
MST responds to Questions/Clarifications	November 21, 2008
Proposals due	<b>November 26, 2008 by 1:00 p.m.</b>
Finalist Interviews (if required)	Week of December 1, 2008
Consultant Notice of Award	Week of December 8, 2008

### SECTION 3 INSTRUCTIONS TO PROPOSERS

#### 1. EXAMINATION OF PROPOSAL DOCUMENTS

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

#### 2. ADDENDA

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

#### 3. CLARIFICATIONS

##### A. Examination of Documents

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

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

1. All questions, clarifications or comments must be received in writing by MST no later than 5:00 p.m., Pacific Daylight Time, November 20, 2008, and be addressed to Purchasing Manager, Monterey Salinas Transit, One Ryan Ranch Road, Monterey, California 93940-5795. MST will also accept questions sent by e-mail, no later than the date/time specified above at samorim@mst.org

2. Requests for clarifications, questions and comments must be clearly labeled, "Marina Area Service Study—Questions/Clarifications." MST is not responsible for failure to respond to a request that has not been labeled as such. Questions/Clarification requests received after TBD, may or may not be considered by MST. If appropriate, written responses may be made. No guarantee of response can be made by MST for late receipt.

C. MST Responses

Responses from MST, will be in the form of a written Addendum, if appropriate, to provide information to all potential Proposers, and will be postmarked no later than November 21, 2008.

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

5. SUBMISSION OF PROPOSAL

A. Date and Time

Proposals must be submitted on or before 1:00 p. m. Pacific Standard Time, on November 26, 2008.

Proposals received after the above specified date and time will not be considered and will be returned unopened.

B. Address

Proposals must be clearly marked on the exterior as "MST RFP 09-05 Marina Area Service Study" and addressed to:

Monterey Salinas Transit  
ATTN: Purchasing Manager  
One Ryan Ranch Road  
Monterey, California 93940-5795

Facsimile (FAX) proposals will not be accepted or considered.

C. Identification of Proposals

Proposer shall submit one (1) original and two (2) copies of its proposal in a sealed package, addressed as shown above, bearing the Proposer's name and return address.

D. Acceptance of Proposal

1. MST 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.

2. MST reserves the right to withdraw this RFP at any time without prior notice and MST makes no representations that any contract will be awarded to any Proposer responding to this RFP.

3. MST reserves the right to postpone proposal openings for its own convenience.

E. Failure to Respond

MST reserves the right to remove from its mailing lists for future RFPs, for an undetermined period of time, the name of any Proposer for failure to accept a contract, failure to respond to two (2) consecutive RFPs and/or unsatisfactory performance. Please note that a "No Bid" or a "Decline to Bid" is considered a response.

6. PRE-CONTRACTUAL EXPENSES

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

1. Preparing its proposal in response to this RFP.
2. Submitting proposal to MST.
3. Negotiating with MST any matter related to this proposal.
4. Any other expenses incurred by Proposer prior to date of contract award.

MST 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 as part of its proposal.

7. JOINT OFFERS

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

8. TAXES

Proposals are subject to state and local sales taxes. MST is exempt from the payment of Federal Excise Taxes.

9. PROTEST PROCEDURES

MST has established a set of written protest procedures. These procedures can be found in the STANDARD TERMS and CONDITIONS section. Any protests filed by a Proposer in connection with this RFP must be submitted in accordance with MST's written procedures.

## SECTION 4 PROPOSAL REQUIREMENTS AND CONTENT

### A. PROPOSAL REQUIREMENTS

Interested Proposers shall submit proposals in two (2) separate sealed envelopes within the proposal package. **Sealed envelopes containing TECHNICAL NARRATIONS only shall be clearly marked as “PART I TECHNICAL NARRATIONS ONLY”** Part I will contain one (1) original and two (2) copies of technical narration, excluding cost. **Sealed envelopes containing COST/PRICE information shall be clearly marked as “PART II COST/PRICE information”.** Part II, consisting of one (1) original and one (1) copy will contain only information relating to cost.

Specifically, proposals shall include the following information presented in clear, comprehensive, and concise narrative statements.

#### 1. General Requirements

a. Proposers are requested to follow the RFP format, cross-referencing responses to specific RFP subsections.

b. Proposers must respond to all subsections under Part I Technical Specifications Proposal and Part II Cost Proposal specifications. **Cost Proposal and pricing information are not to be included in the Technical Proposal.**

### B. Part I Technical Proposal

Shall contain the following sections:

1. Proposal Transmittal Letter including email address.
2. Proof of insurance and/or other financial resources.
3. Narrative discussion and response to each Technical Specification as described in SECTION 2 SCOPE OF WORK/SERVICES (see 2.1.2 Technical Specifications).
4. Completed Exhibits 1 and 2, accompanied by appropriate responses and documentation.

### C. Part II Cost Proposal

Submit a fully developed cost for services required in the scope of work/services in this RFP, along with a suggested timeline and payment milestones as work/services are delivered.

D. PROPOSAL FORMAT AND CONTENT

1. Presentation

Proposals shall be typed, and submitted on 8 1/2" x 11" size paper, using a single method of fastening. They should not include any unnecessarily elaborate or promotional materials; lengthy narrative is discouraged. They should not exceed fifteen (15) pages in length not including questionnaire, resumes, or any Exhibits or Certificates/Affidavits or work product examples.

2. Letter of Transmittal

A Letter of Transmittal shall be addressed to Purchasing Manager and must, at a minimum, contain the following:

- a. Identification of Proposer, including name and mailing address.
- b. Proposed working relationship between Proposer and subcontractors, if applicable.
- c. Acknowledgment of receipt of all RFP addenda, if any.
- d. Name, title, address and telephone number of contact person during period of proposal evaluation.
- e. A statement to the effect that the proposal shall remain valid for a period of not less than 90 days from the date of submittal.
- f. Signature of a person authorized to bind Proposer to the terms of the proposal.

3. Technical Proposal

This section of the proposal should establish the ability of Proposer to satisfactorily perform the required work by reasons of: experience in performing work of a similar nature; demonstrated competence in the services to be provided; strength and stability of the firm; staffing capability; work load; record of meeting deliverables on a timely manner on similar projects; and supportive client references.

a. Qualifications, Related Experience and References of Proposer

Proposer shall:

- (1) Provide a brief resume, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size and location of offices; and number of employees.
- (2) Describe the firm's experience in performing work of a similar nature to that solicited in this RFP.
- (3) Provide a minimum three (3) references.

b. Exceptions/Deviations

State any exceptions to or deviations from the requirements of this RFP, segregating "technical" exceptions from "contractual" exceptions. Where Proposer wishes to propose alternative approaches to meeting MST's technical or contractual requirements, these should be thoroughly explained to allow adequate evaluation by MST. Clearly identify any exceptions/deviations and attach the narrative with Attachment "B."

Such exceptions/deviations will be considered in evaluating proposals and shall, if acceptable to MST, be incorporated into the final contractual agreement.

5. Appendices

Information considered by Proposer to be pertinent to this project and which has not been specifically solicited in any of the aforementioned sections may be submitted. However, Proposers are cautioned that this does not constitute an invitation to submit large amounts of extraneous materials, nor does it guarantee any consideration by MST.

E. REQUIRED COMPONENTS OF PROPOSAL

To be considered a responsive proposal, Proposer must submit all of the following:

1. Completed Letter of Transmittals with all requested information
2. Required Forms/Certifications/Affidavits/Exhibits.

## SECTION 5 EVALUATION CRITERIA, PROPOSAL EVALUATION AND AWARD

### A. Evaluation Criteria

All proposals received as specified will be evaluated by an Evaluation Committee comprised of MST Staff. Part 1 Technical Narrative Proposals will be evaluated with the primary focus on Technical Evaluation Criteria only. Price will not be a factor during the Technical Narrative evaluation process. For additional details, see B. Proposal Evaluation Process below.

MST will evaluate Technical Narrative proposals using the following criteria and corresponding weight:

<i>Criterion</i>	<i>Value</i>
a. <b>Organizational management and business plan:</b> Proposers understanding of the project and MST's operating environment.	25%
b. <b>Past performance and quality of services:</b> Previous experience with projects of a similar scope and nature.	25%
c. <b>Quality Assurance:</b> Ability of the proposed task plan to meet MST's objectives.	25%
d. <b>Qualification of key personnel:</b> Work Study Samples.	15%
e. <b>Reference Check:</b> Results of reference check.	10%

#### 1. Technical Evaluation Criteria.

Technical Evaluation Criteria will be considered in descending order of importance with the exception of Technical Evaluation Criteria a, b, and c which are to be considered equal in value. The value of "d" and "e" descend in order of importance:

a. **Organizational management and business plan** demonstrating understanding of technical requirements and comprehension of the services to be provided.

- 1) General description of the Proposer, including primary business, other affiliated business or services, type of organization (joint venture, corporation, sole proprietor, etc.), and other descriptive material.

- 2) Proposer's professional and technical qualifications, experience and communication skills that will be brought to this contract. Tell us how you will manage and apply deliverables.
- 3) Furnish a procedural plan on how work will be processed to enable MST to evaluate your performance.
- 4) Adequacy of Proposer's submitted technical proposal. Evaluators will look to see how well Proposer's submittals address the following: Does proposal present and address all requested elements of the RFP? Are individual elements expressed fully and clearly with required supporting documentation?
- 5) Demonstrated ability to provide reports and power point demonstrations to MST staff, MST Board and other public audiences in the Monterey Peninsula area.

**b. Past performance and quality of services.** Proposer Qualifications and References (Exhibit-2) should be completed listing three (3) current references for similar projects; and three (3) for completed projects. Public agency organizational references should be provided whenever possible.

**c. Quality Assurance.**

- 1) Provide narrative descriptions of the approaches and procedures to be used to meet overall Scope of Service requirements.
- 2) Provide a sample Quality Assurance plan featuring communication with MST resolution processes, follow-up procedures, and other accountable measures in compliance with the RFP Quality Assurance clause.
- 3) Submit a typical scope of services timeline schedule – presenting a clear understanding of MST requirements and deliverables.
- 4) Describe outstanding or prior lawsuits, claims, liens or judgments.

**d. Qualification of key personnel.**

**Work Study Samples:** Two (2) executive overview sample studies developed for current Proposer customers most closely paralleling the RFP, Scope of Services.

**B. Proposal Evaluation Process.**

The intent of this proposal is to award a Contract that will provide MST an up to date evaluation of how well bus service in and around the Monterey Peninsula

area is meeting passenger demand with respect to on-time performance, safety and convenience; that will examine present and anticipated development and travel patterns; and that will subsequently propose a series of new and adjusted bus routes that would better serve existing and future public transit customers as well as increase overall ridership. Proposals will be evaluated based upon the following criteria:

1. Evaluation is an assessment of both the proposal and the Proposer's ability to accomplish the prospective Scope of Services and to comply with contract terms and conditions.
2. All proposals are first evaluated and ranked on Technical Evaluation Criteria responses.
3. Proposals determined technically acceptable are re-evaluated with cost as a consideration.
4. Using a combination of both technical and cost evaluations, proposals are ranked to establish a competitive range.
5. MST may negotiate with all responsible proposers in the competitive range. Or, at its sole discretion, hold clarification discussions with only one of those responsible proposers in the competitive range. Proposers should be aware, that award may be made without interviews or further discussion.

#### C. Award

1. MST reserves the right to award without written or oral discussions, or negotiations. Proposers are encouraged to initially submit their best technical and price offer. MST's intent is to award its total requirements to one Proposer. Negotiations may or may not be conducted with Proposers. Therefore, any proposal submitted should contain Proposer's most favorable terms and conditions, since the selection and award may be made without subsequent discussion and/or interview(s) with any Proposer.
2. MST will award to the proposer whose proposal is most advantageous to MST, considering cost and other criteria.
3. The intent is to award a single contract to the responsible Proposer presenting the lowest cost, responsive proposal and a qualified offer. MST may negotiate contract terms with the selected firm prior to award, and expressly reserves the right to negotiate with several Proposers simultaneously and, thereafter, to award a contract to the Proposer offering the most favorable terms to MST. The contract awarded will follow the outline of the "Sample Contract" presented in Exhibit 3, of this RFP, as modified to reflect negotiated changes and applicable provisions of this RFP.

4. All proposals may be rejected if such action is determined to be in the best interest of MST

5. When contract award is approved, unsuccessful proposers will be notified of the award in a timely manner.

**D. Quality Assurance**

Within 10 days of contract award, Contractor shall establish a quality control program to ensure that the requirements of the contract are performed and provided as specified and shall state how quality of performance will be monitored. This program shall include procedures to be approved by the MST Project Manager before implementation, and shall include a self-inspection method covering all the services to be performed under the contract.

The program shall also include a method for monitoring, identifying, and correcting deficiencies in the quality of services furnished to MST before levels of performance become unsatisfactory. MST Program Managers shall be notified of all corrective actions taken through a Contractor's report.

**E. Contract Administration**

MST Project Manager will administer the operational aspects of the contract. Changes to the Scope of Services, contract cost, quantity, quality or delivery schedules shall be coordinated with the Project Manager and will be made official by a properly executed modification. Any proposed change or modification and all correspondence that in any way concerns the terms and conditions of this contract shall be submitted directly to the Project Manager at MST.

Contractor shall immediately notify the Project Manager of any occurrence or condition that interferes with the full performance of the contract. If notification is through telephone exchange the Contractor is required to follow with a written notification within twenty-four (24) hours of the occurrence.

**F. Project Manager**

The Project Manager will be the primary point of contact for MST in coordinating project management with the Contractor'. Technical project questions, issues and requests for clarifications should be directed to:

MST Planning Manager
Mr. Michael Gallant One Ryan Ranch Road Monterey, CA 93940 (831) 393-8128

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

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

### **1.0 PROPOSAL ACCEPTANCE PERIOD**

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

### **2.0 RIGHTS RESERVED**

#### **2.1 Rejection**

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

#### **2.2 Cover**

Should the successful Proposer fail to comply with the conditions of this proposal or fail to complete the requirements of the proposal, MST reserves the right to complete the required work, at the expense of the Contractor.

#### **2.3 Severability**

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

### **3.0 PROHIBITED INTERESTS**

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

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

### **4.0 CONTRACT**

Proposer's signed proposal and written acceptance by MST shall constitute a Contract.

## 5.0 PROPOSER AGREEMENT

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

## 6.0 STATEMENT OF EXPERIENCE AND QUALIFICATIONS

The Proposer may be required upon request of the MST General Manager/CEO to prove to his/her satisfaction that their firm has the skill and experience and the necessary facilities and financial resources to perform in a satisfactory manner.

## 7.0 WAIVER

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

## 8.0 COMPLIANCE WITH LAWS

**ADHERENCE TO ALL LOCAL, STATE, AND FEDERAL LAWS AND REQUIREMENTS.** The Contractor shall adhere to all applicable federal, state, and local laws, codes and ordinances, including, but not limited to, those promulgated by CAL-OSHA, FED-OSHA, EPA, the California State Department of Health Services, and MST Environmental Health Department.

## 9.0 LAWS GOVERNING CONTRACT

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

## 10.0 ATTORNEY FEES

In the event that suit is brought to enforce or interpret any part of this proposal or resulting contract, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, a reasonable attorney's fee, including expert witness fees, as may be fixed by the court. These fees and cost shall be taxed as costs in that proceeding, and shall not necessitate the filing of a separate attempt to

recover. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover its costs shall not recover attorney's fees. No sum for attorney's fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to recover its costs or attorney's fees.

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

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

As described under Standard Terms and Conditions in Section 7, Item 13.2, Termination for Default/Breach, MST may terminate this contract in whole or in part. In that event, the Contractor shall be liable for such liquidated damages accruing until such time as MST may reasonably obtain delivery or re-performance of similar deliverables and/or services. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor.

Prior to the imposition of liquidated damages the Contractor shall meet with MST's Project Manager to review the contemplated implementation of a Liquidated Damage charge and deduction. The Contractor shall be provided with the opportunity to present any mitigating information/evidence to substantiate any claim that the deficiency in performance was beyond the control and/or without fault or negligence of the Contractor. The final authority to impose liquidated damages shall be the Project Manager.

**NOTE:** Liquidated damages will not be imposed during the first thirty (30) day period of the contract term.

<b>ITEM</b>	<b>INCIDENT</b>	<b>DEDUCTION FROM BILLING</b>
1	Technical Specification numbers 2.1.2.1, 2.1.2.2 and 2.1.2.3. Failure to complete these tasks in a timely manner as agreed upon in the contract will result in the following: (If incident is beyond the control of the Contractor no penalty will be assessed.)	A 15% deduction from first milestone invoice payment.

2	Technical Specification number 2.1.2.4. Failure to complete this task in a timely manner as agreed upon in the contract will result in the following: (If incident is beyond the control of the Contractor no penalty will be assessed.)	A 15% deduction from second milestone invoice payment.
3	Technical Specification number 2.1.2.5 and 2.1.2.6. Failure to complete this task in a timely manner as agreed upon in the contract will result in the following: (If incident is beyond the control of the Contractor no penalty will be assessed.)	A 15% deduction from third milestone invoice payment.
4	Failure to immediately inform MST of contractors inability to provide timely services, as described in Section 2 scope of work/services shall result in the following: (If incident is beyond the control of the Contractor no penalty will be assessed.)	The standard contract withhold shall be increased from standard withhold of 15% of the contract value to 25% of contract value

12.0 EFFECT OF EXTENSION OF TIME

Granting, or acceptance, of extensions of time to complete the work or furnish the labor, supplies, materials, or equipment, will not operate as a release to Contractor.

13.0 NOTIFICATION

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

If within two working days of the immediate notification, the identified issue has not been resolved between MST and the Contractor, the Contractor shall provide a second written notice. At a minimum the written notice shall provide a

description of the nature of the issue, the time, date, and location at which the problem was discovered, and the name of the MST representative to whom initial notice was given.

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

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

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

a. Confirm that a proposed change request is necessary and, when necessary, give appropriate direction for further performance.

b. Deny that the contract has been revised and, when necessary, direct the Contractor to proceed with the contract work.

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

#### 14.0 CHANGES BY CONTRACTOR

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

#### 15.0 CHANGES BY MST

If requirements are identified which are not specified in this document, the Contractor shall, if ordered in writing by MST, perform such work at the Contractor's fair market prices.

If requirements specified in the Contract are required to be omitted from the work, the Contractor shall, if ordered by MST, omit the performance of such work. A deduction shall be made from the amount to be paid to the Contractor in an amount that MST and Contractor shall determine and mutually agree to be the reasonable value of such work. It is understood, however, that the amount of work required by the Contract shall not, in accordance with the above provisions referring to additions and omissions, be increased or diminished to substantially alter the general character or extent of the Contract.

#### 16.0 APPROVAL BY THE GENERAL MANAGER/CEO

All work shall be executed under the direction and supervision of the General Manager/CEO or authorized agent(s), on whose inspection of work shall be accepted or rejected. The General Manager/CEO shall have full power to accept or reject work

performed under the Contract, which does not conform to the terms and conditions set forth in the Contract documents.

#### 17.0 DAMAGES

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

#### 18.0 SELL OR ASSIGN

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

#### 19.0 INDEMNIFICATION

The Contractor shall indemnify, keep and save harmless MST, its agents, officials, and employees, against all suits or claims that may be based on any injury to persons or property that may occur, or that may be alleged to have occurred, in the course of the performance of this contract by the Contractor, whether or not it shall be claimed that the injury was caused through a negligent act or omission of the Contractor or its employees. The Contractor shall, at its own expense, defend any and all costs and other expenses arising from or incurred in connection to such. If any judgment shall be rendered against MST in any such action, the Contractor shall at its own expense satisfy and discharge the action.

#### 20.0 COVENANT AGAINST GRATUITIES

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

#### 21.0 RIGHTS AND REMEDIES OF MST

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

#### 22.0 BINDING EFFECT

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

### 23.0 WAGE AND PRICE REGULATIONS

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

### 24.0 DOCUMENTS DEEMED PART OF THE CONTRACT

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

Such documents include:

- a. Contract signed by both parties
- b. MST RFP #09-05, Marina Area Service Study, consisting of:
  - (1) Addenda to MST RFP #09-05, if any
  - (2) Scope of Work
  - (3) Required Certifications/Forms
  - (4) Standard Terms and Condition
  - (5) General Terms and Conditions
  - (6) Proposal, as submitted by Proposer

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

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

### **1.0 FTA FUNDING REQUIREMENT**

This project may be financed in part by the Federal Transit Administration. Accordingly, federal requirements apply to this Contract and if those requirements change then the changed requirements shall apply to the project as required. MST and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to MST, Contractor, or any other party pertaining to any matter resulting from the underlying contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

MST and the Contractor recognize that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies, " 49 CFR Part 31, apply to actions pertaining to this Contract. MST and the Contractor also agree to comply with the requirements of 49 U.S.C. 5323 (h) (2) by refraining from the use of any FTA assistance to support procurements using exclusionary or discriminatory specifications. MST also agrees to refrain from using state or local geographic restrictions unless otherwise allowed by FTA. Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### **2.0 FEDERAL CHANGES**

Contractor shall at all times comply with all applicable FTA regulation, policies, procedures and directives, including without limitation those listed directly or by reference in the current Master Agreement (Form FTA MA (2) between MST and FTA, as amended.

Contractor's failure to so comply shall constitute a breach of contract.

### **3.0 MAINTENANCE, AUDIT AND INSPECTION OF RECORDS**

The Contractor shall permit the authorized representatives of MST, the United States Department of Transportation and the Comptroller General of the United States to inspect, audit, make copies and transcriptions of all work, materials, payrolls and other data and records of the Contractor relating to its performance under the Contract. The

Contractor shall maintain all such records for a period of three (3) years after MST makes final payment under this Contract.

#### 4.0 DISADVANTAGED BUSINESS ENTERPRISES

4.1 The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of Contracts and subcontracts financed in whole or in part with federal funds provided under this Contract. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

4.2 If a specific DBE goal is assigned to this contract, it will clearly be stated below in 4.5 of this section of this document. If the Contractor fails to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, MST may declare the Contractor non-compliant and in breach of contract. If a goal is not stated in the Special Provisions, it will be understood that NO specific goal is assigned to this contract.

4.3 A Disadvantaged Business Enterprise (DBE) means a small business concern which is at least 51% is owned by one or more socially and economically disadvantaged individuals, or, in the case of a publicly-owned business, at least 51% of the stock is owned by one or more socially and economically disadvantaged individuals. One or more of the socially and economically disadvantaged individuals who own it must control the management and daily business operations.

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

4.5 There is no DBE goal assigned to this contract.

#### 5.0 TITLE VI COMPLIANCE

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

## 5.2 Equal Employment Opportunity

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

## 5.3 Access Requirements for Individuals with Disabilities

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

## 6.0 ENERGY CONSERVATION REQUIREMENTS

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

## 7.0 ENVIRONMENTAL REQUIREMENTS

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

7.2 The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended 42 U.S.C. 7401 et seq. The Contractor agrees to report each violation to MST and understands and agrees that MST will report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these

requirements in each subcontract exceeding \$25,000 financed in whole or in part with Federal assistance provided by FTA.

#### 8.0 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

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

#### 9.0 NON-COLLUSION AFFIDAVIT

Proposer will be required to submit with their proposal a Non-Collusion Affidavit.

#### 10.0 PENALTY FOR COLLUSION

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

#### 11.0 RESTRICTIONS ON LOBBYING

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

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

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

**12.0 BUY AMERICA CERTIFICATION (not applicable for professional service contract)**

**13.0 TERMINATION**

**13.1 Termination for Convenience**

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

**13.2. Termination for Default/Breach**

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

**13.3 Termination for Force Majeure**

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

**13.4 Opportunity to Cure**

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

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

pursuing all available remedies against Contractor and its sureties for said breach or default.

### 13.5 Waiver of Remedies for any Breach

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

### 14.0 DISPUTE RESOLUTION

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

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

### 15.0 PROTEST PROCEDURES

#### 15.1 General Procedures

a. Any proposer or Contractor whose direct economic interest would be affected by the award of the Contract or the failure to award the Contract may file a protest, claim or dispute with MST pursuant to these protest procedures prior to filing any protest, claim or dispute with the FTA.

b. Claims or disputes, where applicable, shall be in writing and filed with MST directed to the General Manager, One Ryan Ranch Road, Monterey, CA 93940. FAILURE TO COMPLY WITH ANY OF THE REQUIREMENTS MAY RESULT IN REJECTION OF THE PROTEST.

#### 15.2 Protest Before Proposal Opening

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

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

15.2.1 The name, address, and telephone number of the protester.

15.2.2 The grounds for the protest, any and all documentation to support the protest and the relief sought.

15.2.3 Steps that have been taken to date in an attempt to correct the alleged problem or concern.

### 15.3 Protest After Contract Award

a. Any individual or entity may file a protest with MST alleging a violation of applicable federal, state law and/or MST policy or procedure relative to seeking, evaluating and/or intent to award a procurement Contract. In addition, any individual or entity may file a protest with MST alleging that MST has failed to follow its Procurement Protest Procedures. Such protest must be filed no later than five (5) calendar days from the notice of intent to award or non-award of the procurement Contract.

b. A protest, dispute, or claim with respect to the award of a Contract through solicitation of proposals shall be submitted in writing within five (5) days of notification of such award to the General Manager/CEO for a decision. All claims shall clearly identify:

(1) The name, address, and telephone number of the protester.

(2) The grounds for the protest, any and all documentation to support the protest and the relief sought.

(3) Steps that have been taken to date in an attempt to correct the alleged problem or concern.

c. A written decision by the MST General Manager/CEO stating the grounds for allowing or denying the protest will be mailed to the protestor prior to execution of the Contract. Such decision shall be final unless the Board of Directors accepts an appeal of the General Manager/CEO's decision.

### 15.4 FTA Protest Procedures

FTA will only review protests regarding the alleged failure of MST to have written protest procedures, or the alleged failure to follow such procedures. An alleged violation on other grounds falls under the jurisdiction of the appropriate State or local administrative or judicial authorities. Alleged violations of a specific Federal

requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with the Federal regulation. FTA will only review protest submitted by an intercede party as defined in FTA 4220.1E. FTA's decision on any appeal will be final.

## **SECTION 8 FORMS CERTIFICATIONS**

The following FTA and MST forms/certifications are to be executed by each Proposer and enclosed with the proposal. Proposals received without these forms/certifications completed will not be considered.

Contact by mail, Telephone or Fax MST's Purchasing Manager, for questions regarding forms and/or certifications.

One Ryan Ranch Road  
Monterey, California 93940  
Telephone (831) 899-2558  
Fax (831) 899-3954

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

### **IMPORTANT NOTICE**

#### **PROPOSALS DOCUMENTS TO BE RETURNED**

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

- a. Application for DBE and/or California Unified Certification DBE status Certification (if applicable)
- b. Certificate of Primary Contractor Regarding Debarment
- c. Lobbying Certificate
- d. MST Bidders/Proposers list form
- e. Non-Collusion Certificate
- f.. Proposer's Statement Regarding Insurance Coverage
- g. Worker's Compensation Insurance Certificate
- h. Experience Statement
- i. Proposer information sheet(s)
- j. Certificate of Compliance (Attachment B)

- k. Sample Contract (Exhibit 3 - Proposer to provide written exception(s) to any of the terms and/or conditions of sample contract and return proposal submittal.)

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

**These Certificates Must Be Included in the Proposal In Order for the Submission to be Valid**

		Type of Contract					
		Procurement (Goods)	Procurement (Rolling Stock)	Construction	Transit Operations	Architectural and Engineering	Professional Services
	<b>FTA Required Certifications</b>						
1	Lobbying		1	1	1	1	<b>1</b>
2	Buy America	2	2	2			
3	DBE	3	3	3	3	3	<b>3</b>
4	Certification of Lower-Tier Participants (Subcontractors) Regarding Debarment, Suspension	4	4	4	4	4	<b>4</b>
5	Certification Of Primary Contractor Regarding Debarment, Suspension	4	4	4	4	4	<b>4</b>

**These Certificates Must Be Included in the Proposal In Order for the Submission to be Valid**

**DISADVANTAGE BUSINESS ENTERPRISE**

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

**AFFIDAVIT FOR DISADVANTAGED BUSINESS ENTERPRISE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**CERTIFICATION OF RESTRICTIONS ON LOBBYING**

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

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**PROPOSER'S STATEMENT  
REGARDING INSURANCE COVERAGE  
To Be Submitted With Proposal**

PROPOSER HEREBY CERTIFIES that the Proposer has reviewed and understands the insurance coverage requirements specified in the Request For Proposals No. 06-07 to provide PENINSULA AREA SERVICE STUDY. Should the Proposer be awarded the contract for the work, Proposer further certifies that the Proposer can meet the specified requirements for insurance, including insurance coverage of the subcontractors, and agrees to name MST as Additional Insured for the work specified.

---

Name of Proposer (Person, Firm, or Corporation)

---

Signature of Proposer's Authorized Representative

---

Name & Title of Authorized Representative

---

Date of Signing

## **SECTION 9: LISTING OF ATTACHMENTS AND EXHIBITS**

### **9.1 Attachment “A” Insurance**

General:

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

Types of Insurance and Minimum Limits

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

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

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

Contractor shall obtain and maintain Comprehensive General Liability Insurance coverage in the minimum amount of one million dollars (\$1,000,000) combined single limit, including bodily injury, personal injury, and property damage. Such insurance coverage shall include, without limitation:

Other Insurance Provisions

As to all insurance coverage required herein, any deductible or self-insured retention exceeding \$5,000.00 shall be disclosed to and be subject to written approval by MST.

If any insurance coverage required hereunder is provided on a “claims made” rather than “occurrence” form, Contractor shall maintain such insurance coverage for five (5) years after expiration of the term (and any extensions) of this Contract.

All required Automobile Liability Insurance and Comprehensive or Commercial General Liability Insurance shall contain the following endorsement as a part of each policy: "MST is hereby added as an additional insured as respects the operations of the named insured."

All the insurance required herein shall contain the following clause: "It is agreed that this insurance shall not be canceled until thirty (30) days after MST shall have been given written notice of such cancellation or reduction."

Contractor shall notify MST in writing at least thirty (30) days in advance of any reduction in any insurance policy required under this Contract.

Contractor agrees to provide MST at or before the effective date of this Contract with a certificate of insurance of the coverage required.

If CONTRACTOR, for any reason, fails to maintain insurance coverage, which is required pursuant to this CONTRACT, the same shall be deemed a material breach of contract. MST, at its sole option, may terminate this CONTRACT and obtain damages from the CONTRACTOR resulting from said breach. Alternatively, MST may purchase such required insurance coverage, and without further notice to CONTRACTOR, MST may deduct the cost therefore from CONTRACTOR'S invoices charges for services rendered.

**9.2 ATTACHMENT B**  
*(Proposer must complete and submit with his proposal)*

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

A. COMPLIANCE:

This is to certify that Proposer agrees and shall comply with the terms and conditions of the RFP.

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

Proposer  
Signature: \_\_\_\_\_

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

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

B. EXCEPTION:

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

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

Proposer  
Signature: \_\_\_\_\_

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

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

Proposer shall list and attach to this form proposer's exception(s):

**9.3 EXHIBIT #1**

NON-COLLUSION AFFIDAVIT

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

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

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

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

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

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

**[The Remainder Of This Page Is Intentionally Left Blank]**

**9.4 EXHIBIT 2**

**PROPOSER QUALIFICATIONS AND REFERENCES**

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

**A. GENERAL PROPOSER INFORMATION:**

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

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

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

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

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

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

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

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

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

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

How was it resolved?

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

**EXHIBIT 2 PROPOSER QUALIFICATIONS AND REFERENCES CONTINUED**

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

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

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

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

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

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

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

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

THIS STATEMENT MUST BE NOTARIZED.

Attach the "California All-Purpose Acknowledgement" duly notarized.

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

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

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

**9.5 EXHIBIT 3**

**DRAFT CONTRACT**

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

**DRAFT CONTRACT  
FOR  
MARINA AREA SERVICE STUDY  
RFP # 09-05**

THIS CONTRACT is made by and between Monterey-Salinas Transit, a joint powers agency hereinafter called "MST", and (Name of Contractor), herein after called "CONTRACTOR". For reference purposes, the effective date of this Contract is on date of executed Contract.

MST has caused specifications, and other contract documents, hereinafter referred to as "Scope of Work", to be prepared for certain work on the referenced project; and this will include, the RFP # 09-05 and its salient sections as listed below:

**1. SCOPE OF WORK**

**THE PARTIES AGREE AS FOLLOWS:**

Contractor shall furnish MST all materials and services in full accordance with Request for Proposal No. 09-05 prepared and issued by MST entitled **MARINA AREA SERVICE STUDY** dated November 3, 2008.

**(IN THIS SECTION OF THE CONTRACT, ANY ADDITIONAL HIGHLIGHTS, DETAILS, OR NEGOTIATED CHANGES SHALL BE CALLED OUT.)**

**2. COMPONENT PARTS**

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

- A. This Contract
- B. Request for Proposal No. 09-05 and all Addenda
- C. Submitted Fee Schedule

### 3. PERIOD OF PERFORMANCE

Services under this Contract shall commence (Month day year), and continue through (Month day year). Contractor shall not be held liable for delays resulting from problems of scheduling on the part of MST.

### 4. CONTRACT PRICE

MST agrees to pay the Contractor rates in accordance with their submitted Fee Schedule (ranging between \_\_\_\_\_ and \_\_\_\_\_ per hour), with a not-to-exceed (NTE) contract amount of \_\_\_\_\_, for services performed in accordance with this Contract. MST and the Contractor must mutually agree upon any adjustments in payment.

### 5. INVOICES

5.1 PAYMENT PROCEDURES: All payments to Contractor for services rendered shall be paid in arrears, after the service has been provided. Contractor shall invoice MST upon completion of each of the three milestones as listed in Exhibit (4) four. Contractor on each invoice shall provide documentation showing dollar amount paid to their DBE sub-contractor upon completion of each of the three milestones as listed in Exhibit (4) four. MST shall reimburse Contractor within thirty (30) calendar days of receipt of all Contractor invoices. The submission of incomplete or inaccurate invoices by Contractor may delay payments to Contractor. Acceptance of invoice(s) is within MST sole discretion.

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

5.2 Invoices shall be mailed to:

5.2.1 Monterey-Salinas Transit  
One Ryan Ranch Road  
Monterey, CA 93940-5795  
ATTN: Account Payable

5.2.2 MST shall mail payments to:

Contractor  
Street Address  
City, State, Zip  
ATTN: Accounts Receivable

## **6. COST REPORTING**

The Contractor shall notify MST's Project in writing whenever it has reason to believe that the total allocable costs have reached 75% of the of the total contract budgeted amount. Additionally, the Contractor shall notify MST immediately if the projected costs of performance of additional requested tasks would cause the budgeted contract amount to be exceeded. The Contractor is not authorized to exceed the budgeted contract amount unless or until a contract modification has been issued, which increases the price.

## **7. NOTICE**

Any notice or correspondence required or permitted to be given under this Contract shall be deemed given when personally delivered to recipient thereof or mailed by registered or certified mail, return receipt requested, postage prepaid, to the appropriate recipient thereof. In the case of the Contractor, at Name, Street address, City, State, Zip. In the case of MST, at One Ryan Ranch Road, Monterey CA 93940, or any other address which either party may subsequently designate in writing to the other party.

## **8. INSURANCE**

### **8.1 General:**

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

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

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

- (a) Worker's Compensation and Employer's Liability Insurance in conformance with the laws of the State of California (not required for Contractor's or subcontractors having no employees) with limits of not less than one million dollars (\$1,000,000) per occurrence.
- (b) Contractor's vehicles used in the performance of this Contract, including owned, non-owned (e.g. owned by Contractor's employees), leased or hired vehicles, shall each be covered with Commercial

Automobile, Liability Insurance in the minimum amount of one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.

(c) Contractor shall obtain and maintain Comprehensive General Liability Insurance coverage in the minimum amount of one million dollars (\$1,000,000) combined single limit, including bodily injury, personal injury, and property damage. Such insurance coverage shall include, without limitation:

### 8.3 Other Insurance Provisions

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

notice to Contractor, MST may deduct the cost therefore from Contractor's invoices charges for services rendered.

## **9. INDEMNIFICATION**

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

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

## **10. NON-DISCRIMINATION ASSURANCE**

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

## **11. GOVERNING LAW**

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

## **12. TERMINATION**

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

- 12.1 Termination for Convenience. MST may terminate this contract, in whole or in part, at any time by written notice to Contractor when it is in MST's best interest. The Contractor shall be paid its costs, including contract

closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to MST.

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

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

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

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

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

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

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

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

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

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

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

### **13. DISPUTE RESOLUTION**

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

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

### **14. LITIGATION**

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

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

## **15. LIQUIDATED DAMAGES - DEDUCTIONS FROM UNPAID BILLINGS – REMEDIES FOR NON-PERFORMANCE**

Since the actual damages to MST for the delay of work/services and/or failure to perform scope of work duties will be difficult or impossible to assess. It is agreed that if the contract is terminated by MST, because the Contractor fail to deliver and/or perform the services within the time specified in the contract. That the contractor shall be liable for thirty percent (30%) of the total value of the contract as fixed and liquidated damages. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor.

Prior to the imposition of termination and liquidated damages the Contractor shall meet with MST's Project Manager, to review the contemplated implementation of termination and Liquidated Damage. The Contractor shall be provided with the opportunity to present any mitigating information/evidence to substantiate any claim that the deficiency in performance was beyond the control and/or without fault or negligence of the Contractor. The final authority to terminate the contractor and to impose liquidated damages shall be the Project Manager

## **16. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

There is no DBE participation goal assigned to this contract. Please see item number 5 for invoicing or contractor is required to document their good faith activities in its efforts to involve DBE's in this project. If Contractor fails to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, MST may declare the Contractor non-compliant and in breach of contract. Contractor will send DBE documentation for this contact to MST's Purchasing Manager each contract year.

## **17. DIVERSITY PROGRAM FOR CONTRACTS**

The contractor is advised that MST, recipient of federal financial assistance from the Federal Transit Administration (FTA) is committed to and has adopted a Diversity Program for Contracts in accordance with federal regulations 49 CFR Part 26, issued by U.S. DOT.

It is the policy of MST to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts and to create a level playing field on which Disadvantaged Business Enterprises (DBEs) can compete fairly for contracts and subcontracts relating to MST's professional services activities. To this end, MST has developed procedures to remove barriers to assist DBEs to develop and compete successfully outside of the DBE program. In connection with the performance of this contract, the Contractor will cooperate with MST in meeting these commitments and objectives.

**18. PROMPT PAYMENT TO SUBCONTRACTORS**

The contractor agrees to pay each subcontractor under this contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the contractor receives from Monterey-Salinas Transit. The contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Monterey-Salinas Transit. This clause applies to both DBE and non-DBE subcontractors.

**19. SIGNATURE AUTHORITY:**

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

**20. AUTHENTICATION:**

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

MONTEREY-SALINAS TRANSIT

CONTRACTOR

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

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

Carl G. Sedoryk  
General Manager/CEO

NAME  
TITLE

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

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

By \_\_\_\_\_

David C. Laredo  
MST General Counsel

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

## 9.6 Exhibit 4

### PAYMENT MILESTONES

Payments to contractor shall be made in accordance with the following milestone payment schedule. The percentages listed indicates the percent of the total Contract amount that will be paid to the contractor upon successful and full completion of corresponding milestone. Payments will be made in accordance with the invoice payment provisions as stated in the contract. Please see Section 2 Scope of Work/Services for complete explanation deliverables for milestones.

<u>Milestones</u>	<u>Amounts</u>
1.)	
a.) 2.1.2.1 Initiate and Administer Study,	
b.) 2.1.2.2 Collect and Analyze Data,	\$(25% of total Contract amount)
c.) 2.1.2.3 Collect Additional Data	
100% completed (One and half (1&1/2) month after NTP)	
2.) 2.1.2.4 Identify Ways to Improve Existing Services	\$(30% of total Contract amount)
100% completed (Four (4) months after NTP)	
3.) 2.1.2.5 Prepare Draft Report and	
2.1.2.6 Prepare Final Report	\$(30% of total Contract amount)
100%completed (Five (5) months after NTP)	
4.) Standard Contract Holdback	\$(15% of total Contract amount)
100%payable (Twenty days (20) after MST Final Acceptance)	

### PENALTIES:

Failure of the Contractor to complete the work, services or deliverables within the time allowed will result in the Contractor paying to MST a fixed, and agreed, liquidated damages for each deficiency.

For details see SECTION 6 GENERAL TERMS AND CONDITIONS item number 11.0 LIQUIDATED DAMAGES – DEDUCTIONS FROM UNPAID BILLINGS – REMEDIES FOR NON-PERFORMANCE.