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March 5, 2018

Honorable Board of Directors
Marin County Transit District
3501 Civic Center Drive
San Rafael, CA 94903

SUBJECT: Contract with Marin Airporter for Operations and Maintenance of Fixed Route Package 1 Services

board of directors

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city of mill valley

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supervisor district 3

katie rice
director
supervisor district 2

Dear Board Members:

RECOMMENDATION: Award contract for operation and maintenance of Marin Transit Fixed Route Package 1 service to Marin Airporter for an initial three-year term beginning on July 1, 2018, with two additional option years, and authorize Board President to execute agreement.

SUMMARY: On November 17, 2017, Marin Transit issued a Request for Proposal (RFP) for the operation and maintenance of Package 1 and 2 services. The RFP provided an option to propose a consolidated single contract, Package 3, that would include all the services under Packages 1 and 2. The Package 1 services consist of eight Marin Transit Local Connector and Local Basic routes (22, 49, 219, 228, 233, 245, 251, and 257) and an estimated 74,950 revenue hours annually. Package 2 services consist of 13 of Marin Transit's Rural, Supplemental School, Recreational, and Partnership Routes (61, 66, 68, 113, 115, 117, 119, 122, 125, 139, 145, 151, and 154) and an estimated 30,000 revenue hours annually.

Marin Transit currently provides Package 1 services, under contract with Marin Airporter except for Route 49. As part of the RFP design, the Route 49 was shifted from Package 2 to Package 1 for continuity of service and equipment utilization. The Package 2 services and Route 49 are currently provided under contract with MV Transportation.

The Package 1 and 2 contracts will end on June 30, 2018. Marin Transit is required to competitively procure goods and services under the District's Procurement Policy and as a recipient of federal funds.

Through the RFP solicitation, three proposals were received by the deadline of January 12, 2018. However, one proposal was deemed non-responsive. The two responsive proposers and their submittals are as follows:

- Marin Airporter - Proposed Package 1
- MV Transportation - Proposed Packages 1, 2, and 3

Each proposal was thoroughly reviewed, and both responsive firms were invited to interview with a technical panel made up of Marin Transit staff and outside agency staff. The technical panel scored the proposals based on the following criteria identified in the RFP:

Criteria	Pts.
Cover Letter	0
Project Understanding	5
Corporate Capabilities, Experience, Past Performance	14
Key Personnel Qualifications and Experience	13
Organization, Workforce and Staffing	13
Mobilization Plan	5
Facility	5
Vehicle Maintenance	10
Customer Service	5
Intelligent Transportation Technology Plan	5
Field Operations/Road Supervision Plan	5
Reporting Plan	5
Employee Training	5
Safety and Security Plan	5
Cost proposal (in a separate envelope) (Must include completed Cost Proposal Forms, provided in Attachment A)	50
Preference for complying with Labor Code 1072	10% Bonus
Required Forms	0

To ensure that the technical evaluation was independent of cost considerations, the technical panel was not provided with the proposal pricing sheets. Price points were awarded separately based on the total proposal costs over the possible five-year term. The lowest priced proposal received the maximum points and the other proposals received points based on their price relative to the low price.

Based on the proposals submitted and the proposer interviews, the technical panel qualitatively reviewed and ranked the proposals under the only two possible award scenarios:

- Scenario One: an award to MV Transportation for Package 2 and Marin Airporter for Package 1
- Scenario Two: an award to MV Transportation for Package 3

Based on the results of the technical panel's initial review, Marin Transit issued a request for a best and final offer from MV Transportation on February 5, 2018. The request letter identified areas of discrepancy, requested further information, and asked for reconsideration of specific items. Below is a summary of the final scoring of the Best and Final offer for Scenario One (Package 1 and 2) and Scenario Two (Package 3 only).

	Scenario One	Scenario Two
Package 1	Marin Airporter	MV Transportation
Package 2	MV Transportation	MV Transportation
Technical Score	82.67	67.67
Price Score	44.40	50.00
Overall Score	127.07	117.67

Based on the above technical and price scoring, Scenario 1 was ranked higher than Scenario 2, and staff recommends Marin Airporter for the award of the Package 1 service contract.

This contract provides an opportunity for continued success with a valued incumbent contractor and community partner, and positions the agency to take advantage of service improvements planned in the Short Range Transit Plan.

FISCAL/STAFFING IMPACT:

The Marin Airporter Package 1 summary pricing proposal is shown below:

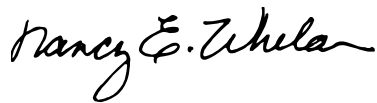
Cost per Revenue Hour - Package 1 Service					
	Base Years			Option Years	
	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23
Hourly Rate	\$49.84	\$51.34	\$52.89	\$54.49	\$56.13
Fixed Monthly Fee	\$167,366	\$172,387	\$177,558	\$182,885	\$188,372
Start-up	\$10,000				

The total cost of this contract over the possible five-year time frame is \$30,511,327 for Package 1 service. This is based on the RFP Package 1 forecast of 74,950 revenue hours annually. The contract allows Marin Transit to increase or decrease the forecast revenue hours by 20 percent

without renegotiating. Option years and expanded revenue hours will be authorized as needed, subject to approval of the Board and available funding.

The effective contract hourly rate for these services in FY18/19 is \$76.77 per revenue hour. This rate is a less than a one percent change from the current contract rate. In the District's 10-year financial plan for the recent Short Range Transit Plan (S RTP), the contract rates for the services in Package 1 and Package 2 included 10 percent and 20 percent escalations, respectively, to account for potential price increases in the new contracts. While the costs of Package 1 are below the S RTP projections, the cost for Package 2 are above the S RTP projections. Combined, both packages are within 1 percent of the S RTP projections and provide for 700 additional service hours.

Respectfully submitted,

A handwritten signature in black ink, reading "Nancy E. Whelan". The signature is written in a cursive, flowing style.

Nancy Whelan

General Manager

**FIXED ROUTE SERVICE
PACKAGE 1
OPERATIONS AND MAINTENANCE CONTRACT**

Between

MARIN COUNTY TRANSIT DISTRICT

And

MARIN AIRPORTER

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CONTRACT FOR THE OPERATION AND MAINTENANCE OF RURAL AND SEASONAL SERVICE

This Contract (CONTRACT) is made and entered into by and between the Marin County Transit District (MCTD) and Marin Airporter (CONTRACTOR).

ARTICLE 1—DEFINITIONS AND INTRODUCTORY PROVISIONS

SEC. 101 DEFINITIONS

As used in this Contract:

1. **Adequate, Appropriate, Proper, Sufficient.** The terms “Adequate, Appropriate, Proper, Sufficient”, or variations thereof as used throughout this Contract, mean performing work or duties under the Contract in accordance with the standards and requirements of the Contract Documents and in accordance with the standards and requirements generally accepted as standards in the transit industry.
2. **Americans with Disabilities Act of 1990 (ADA).** The terms “Americans with Disabilities Act of 1990” or “ADA” mean the statute enacted by the United States Congress as Public Law Number 101-336.
3. **Assumed Annual Revenue Hours.** The term “Assumed Annual Revenue Hours” means the range of revenue hours (with an identified floor and ceiling) on an annual basis that is anticipated by the MCTD to meet the service requirements of this Contract. The Assumed Annual Revenue Hours for each base and option year of the Contract are set out in Section 304, below.
4. **Automated Passenger Counting System.** The term “Automated Passenger Counting System” or “APC” means the on-board automated passenger counting system (Syncromatics) used by MCTD in support of counting passengers.
5. **Automatic Vehicle Location/Automated Voice Annunciation System.** The term “Automatic Vehicle Location System” and “Automated Voice Annunciation System” or “AVL” and AVAS means the automatic vehicle locations system/ Automated Voice Annunciation System (Syncromatics) used by the MTCD in support of vehicle tracking and monitoring.
6. **Block.** The term “Block” means a work assignment for a revenue vehicle.
7. **Clipper.** The term “Clipper” refers to the San Francisco Bay Area’s regional electronic fare system. MCTD is a participating transit agency in the program and accepts Clipper fare media as fare payment from other participating transit agencies with equipment provided by the program’s sponsor the Metropolitan Transportation Commission.
8. **Commencement Date.** The term “Commencement Date” means the date on which CONTRACTOR assumes responsibility for Revenue Service under this Contract.
9. **Contract.** The term “Contract” means this Contract between the MTCD and the CONTRACTOR for the operation and maintenance of Package 1 services described in MTCD Request for Proposals (RFP).
10. **Contract Documents.** The term “Contract Documents” means the following documents which collectively constitute the obligations of CONTRACTOR. In the event of an inconsistency or conflict among Contract Documents, the documents shall control in the following order of

precedence: (1) any Contract Amendments; (2) this Contract and the Attachments hereto; (3) CONTRACTOR's Proposal in response to the RFP; and (4) the RFP and any addenda thereto.

11. **CONTRACTOR.** The term "CONTRACTOR" means the entity entering into this Contract with the MCTD to provide the services described in the Contract Documents.
12. **Days.** The term "Days" means regular business days of the MCTD (Monday-Friday), unless otherwise specifically indicated as "calendar days".
13. **Mobile Digital Surveillance System.** The term "Mobile Digital Surveillance System" means the on-board camera system currently in use by the MCTD for recording video and audio events. The MCTD currently uses the Mobile Digital Surveillance system manufactured by Seon Design, Inc.
14. **Equipment.** The term "Equipment" means the equipment provided by the MCTD for use by CONTRACTOR in providing operations and maintenance services under the Contract, as listed in Attachment B.
15. **Facilities.** The term "Facilities" means the (CONTRACTOR or MCTD) provided buildings, structures, and grounds listed in Attachment C to be used by CONTRACTOR in providing services under this Contract.
16. **Fixed Monthly Fee.** The term "Fixed Monthly Fee" means the fixed amount to be paid to the CONTRACTOR by the MCTD on a monthly basis during the Contract Term, set forth in Attachment A hereto, as compensation for the CONTRACTOR's fixed cost of providing the services covered by this Contract.
17. **Federal Transit Administration (FTA).** The term "Federal Transit Administration" or "FTA" refers to the Federal Transit Administration of the United States Department of Transportation or its successor entity.
18. **Governing Body of the Marin County Transit District.** The term "Governing Body of the Marin County Transit District" or "MCTD Governing Body" means the Marin County Transit District Board of Directors.
19. **Holiday Schedule.** The term "Holiday Schedule" means a modified schedule to provide a different level of transit service on designated days.
20. **Key Personnel.** The term "Key Personnel" means the following CONTRACTOR personnel: The General Manager, Operations Manager, Maintenance Manager, and Safety and Security Manager.
21. **National Transit Database.** The term "National Transit Database" or "NTD" means the uniform reporting system that the U.S. Secretary of Transportation is required to maintain, and to which FTA grant recipients, including the MCTD, is required to report pursuant to Section 5335 of Title 49 of the U.S. Code.
22. **Normal Wear and Tear.** The term "Normal Wear and Tear" means damage or loss to a Revenue Vehicle, Facility or item of Equipment resulting from ordinary use and demand over time. The age of the Revenue Vehicle, Facility or item of Equipment, and the miles accumulated on a Revenue Vehicle, are among the factors the MCTD uses to distinguish Normal Wear and Tear from wear and tear that is the result of abuse or improper use.

23. **On-Time Performance.** The term “On-Time Performance” means the level of success in schedule adherence (avoiding Late and Early Trips).
24. **Proposal.** The term “Proposal” means the written documents submitted by CONTRACTOR in response to MCTD Request for Proposals (RFP).
25. **Revenue Vehicle.** The term “Revenue Vehicle” means the vehicles utilized to provide revenue in accordance with this Contract, as identified in Attachment D.
26. **MCTD General Manager.** The term “MCTD General Manager” means the General Manager of the MCTD or the person designated in writing by the MCTD General Manager to carry out his or her duties under this Contract.
27. **MCTD Project Manager.** The term “MCTD Project Manager” means the individual designated by the MCTD General Manager to administer the MCTD’s responsibilities under this Contract or the person designated by the MCTD Project Manager to carry out his or her responsibilities under the Contract.
28. **MERA.** The term “MERA” means the Marin Emergency Radio Authority, which is a Joint Powers Authority in Marin County that plans, implements and manages a countywide public safety and emergency radio system for the use of all member agencies. MCTD is a member agency and provides MERA radios to contractors.
29. **Radio System.** The term “Radio System” means the communication systems provided by MCTD or CONTRACTOR for voice communications with operators.
30. **Revenue Hour Rate.** The term “Revenue Hour Rate” means the rate to be paid to CONTRACTOR by the MCTD on a monthly basis during the Contract Term, set forth in Attachment A hereto, as compensation for CONTRACTOR’s variable costs of providing the services covered by this Contract.
31. **Special Services.** The term “Special Services” means additional transportation requirements above the existing schedule in support of community events that may occur annually or on a one-time basis.
32. **Support Vehicle.** The term “Support Vehicle” means any CONTRACTOR-provided vehicle needed to support the operation and maintenance of services provided under this Contract, including, but not limited to, cars, vans, tow trucks, lifted-equipped vans, and service trucks.
33. **System.** The term “System” means a complete and organized sum of integral parts that make up a working unit such as hardware, software, mechanical, electrical and structural systems. Examples include but are not limited to bus washes, building structures, flooring, fire/life safety, plumbing, mechanical, electrical, pneumatic, HVAC, and lighting systems.
34. **TransTrack.** The term “TransTrack” refers to MCTD’s centralized Data Management System provided by TransTrack Systems, Inc.®.
35. **Vehicle Trip.** The term “Vehicle Trip” means the operation of a Revenue Vehicle in scheduled service from the first geographic timepoint to the last geographic timepoint on a route or pattern servicing all applicable bus stops along the route or pattern and adhering to the published departure times.

All references to transit terminology in this document not defined above will be as defined in the Federal Transit Administration National Transit Database (NTD) Glossary. The NTD glossary can be found at <http://www.ntdprogram.gov/ntdprogram/Glossary.htm>.

SEC. 102 GENERAL OBLIGATIONS OF THE PARTIES

- A. **In General.** CONTRACTOR shall manage and operate (fixed route or paratransit) services; appropriately maintain a fleet of Revenue Vehicles and Equipment provided by the MCTD; CONTRACTOR in compliance with vendors' specifications and standards; and provide, operate, and maintain all Support Vehicles necessary to accomplish its obligations under this Contract. CONTRACTOR shall also provide an appropriately trained workforce, and provide equipment and materials (except those items provided by the MCTD in accordance with this Contract) needed to operate the Revenue Vehicles over the routes and in accordance with the Revenue Hours established by the MCTD.
- B. **Project Management.** CONTRACTOR shall manage the Contract activities, (i.e., the "Project") according to the terms of this contract and CONTRACTORS defined operating procedures provided to the MCTD. The MCTD shall have the right to establish additional requirements which are reasonable for the operation of this service, pursuant to a Contract Amendment or the service change process set forth in this Contract.
- C. **CONTRACTOR's Responsibilities.** CONTRACTOR's performance shall be in accordance with the obligations of this Contract and the Attachments and forms attached hereto. CONTRACTOR's responsibilities shall include the following:
 - a. Administration
 - i. Maintain written and verbal communications with the MCTD to the satisfaction of the MCTD Project Manager or his or her designee.
 - ii. Comply with and/or assist with the MCTD's monitoring and auditing programs, including Title VI submittals and Section 5335(a) reports for National Transit Database (NTD) submittals. Assist with the MCTD's ongoing programs, including customer satisfaction surveys that may be periodically undertaken.
 - iii. Respond promptly and precisely to the MCTD's requests for information according to the schedule set by the MCTD.
 - iv. File all operating, financial, and performance reports and invoices in accordance with this Contract in order to allow the MCTD to review their content in a timely manner.
 - v. Provide insurance coverage and indemnification as required in this Contract.
 - vi. Refer all MCTD-related media inquiries to the designated MCTD representative, and cooperate in providing public information through the MCTD.
 - vii. Provide any office equipment (including computers, hardware, software, and copiers) that CONTRACTOR determines will be needed for operation of the MCTD's Services, to supplement the Equipment provided by the MCTD as listed in Attachment B.

- viii. Notify the MCTD Project Manager in writing of any issues or concerns in proposed MCTD services or service area expansions, alterations, and/or reductions in service in a timely manner.
- ix. Notify the MCTD in writing, of any issues or concerns in proposed vehicle or other capital purchases.
- x. Identify, develop, and propose to the MCTD new or revised services or service performance ideas intended to create cost savings for the MCTD; provided that the decision to implement any such proposal shall be at the sole discretion of the MCTD.
- xi. Comply with all FTA drug and alcohol testing requirements and assist the MCTD in auditing and monitoring compliance with those requirements.
- xii. Comply with the Equal Employment Opportunity (EEO) Program and with FTA's EEO Program Guidelines.
- xiii. Comply with all applicable Federal, State, and local laws and regulations.
- xiv. Assist in the administration of the MCTD's Vehicle Advertising Program (if relevant).

b. Facilities

- i. The CONTRACTOR will provide a facility for the operation and maintenance of bus services provided under this contract. The facility will include (but not be limited to) an asphalted parking lot, the ability to access the undercarriage of all vehicle inside the garage, maintenance area, parts storage area, revenue vehicle cleaning and servicing area, administrative offices, sufficient space to allow for operator training and relief, revenue vehicle parking lot, and a dispatch area. The maintenance area will be fully equipped with all materials required to maintain all vehicles in accordance with the specifications, manufacturer's warranty, and preventative maintenance programs. The maintenance area will be kept clean and safe at all times throughout the term of the contract. The CONTRACTOR will be responsible for obtaining and complying with all required building, occupancy, or other governmental permits and must abide by OSHA safety standards. MCTD will approve maintenance and storage locations.
- ii. Any leased property for the operation and maintenance of MCTD service will require the lease, to the extent possible under existing lease agreements or for new lease agreements, to be assigned to MCTD as a lessee on such property agreement upon execution of this Contract. MCTD must approve multiple facilities be acquired to be used for services
- iii. The Facility will be equipped with a computer and sufficient internet data communications to support, at a minimum, access to MCTD's web based data management system licensed through TransTrack. MCTD will determine whether and where a wireless communication system (e.g. antennae, router, computer connection, etc.). to download and upload Clipper data is to be located.
- iv. During the term of the Contract, the CONTRACTOR will be responsible for the proper handling, use, storage, and disposal of all waste oil and hazardous

materials produced at the Facility, and will comply with all applicable Federal, State, and local laws, regulations, and requirements. The term “hazardous materials” includes flammable, explosive, or radioactive materials, chemicals, hazardous waste, toxic wastes or materials, or other similar substances, and any petroleum products or derivatives deemed hazardous by Federal, State, or local law.

c. Operations

- i. Meet all operations, equipment, and maintenance requirements established by this Contract.
- ii. Operate and maintain all Revenue Vehicles provided by the MCTD, including new Revenue Vehicles purchased during the Contract Term (except those that the MCTD determines, in its sole discretion, should be operated and/or maintained by another CONTRACTOR).
- iii. Provide transit service in accordance with the fixed route schedules established by MCTD.
- iv. Meet performance and safety standards, as set forth in this Contract and the Attachments hereto.
- v. Provide for the acquisition (by purchase or lease) of the Support Vehicles needed to support the service, and provide for the registration, insurance, maintenance, fueling, repair, and all other associated costs relating to the Support Vehicles.
- vi. Meet employee hiring standards, training standards, and staffing levels as specified in this Contract.
- vii. Provide properly trained, qualified personnel having management, operation, and vehicle maintenance expertise necessary to operate the MCTD’s services, and administer personnel matters regarding CONTRACTOR’s employees.
- viii. Provide properly trained and qualified personnel in sufficient quantities to fully support the service.
- ix. Provide appropriately trained and qualified safety personnel to investigate accidents and unsafe practices in a timely manner, and provide reports of those investigations to the MCTD in accordance with this Contract.
- x. Immediately report to the MCTD any accidents, including passenger accidents, or any other non-routine event or operational deviation, in accordance with this Contract.
- xi. Provide safe operation of the Revenue Vehicles and the Support Vehicles, cooperate with law enforcement agencies regarding security activities on board vehicles and elsewhere, provide safe workplace practices and safe working conditions for vehicle and Equipment maintenance, and meet safety and security requirements at the Facilities in accordance with Section 316.

- xii. Provide appropriate Facilities in accordance with this Contract, and provide, through contract or otherwise, for the maintenance and cleaning of the Facilities, for all landscaping at the Facilities, and for safety and security of the Facilities, including appropriate procedures for Facilities access and control.
- xiii. Provide for and manage all Radio System equipment, and coordinate with the MCTD for the timely maintenance of radios in vehicles and in the Facilities.
- xiv. Promptly notify the MCTD Project Manager of any deficiencies or defects in any Equipment or vehicles furnished by the MCTD, in accordance with this Contract.
- xv. Ensure compliance and enforcement of all MCTD passenger rules, policies and procedures as provided to CONTRACTOR by the MCTD
- xvi. Assist MCTD in marketing in accordance with its marketing plan and perform other marketing activities as determined by MCTD.
- xvii. Provide on road emergency farebox service, such as clearing jammed fareboxes.
- xviii. Provide for vehicle scheduling, run cutting, and operator deployment.
- xix. Conduct all National Transit Database (NTD) on-board passenger data trip surveys in the manner prescribed by the MCTD.
- xx. Manage and implement the posting and timely removal of Rider Alerts, Transit Guides and Schedules, and other MCTD publications and announcements.
- xxi. Probe all fareboxes in revenue service regularly. Maintain all fareboxes in accordance with MCTD and Original Equipment Manufacturer (Genfare) requirements.
- xxii. Ensure Clipper units download/upload data at Facilities. Maintain Clipper equipment in accordance with MCTD, Metropolitan Transportation Commission (MTC), and Cubic requirements. Review weekly recurring reports sent by Cubic to ensure that all Clipper units are working properly.
- xxiii. Provide a complete customer service information phone line, including customer voice phone.
- xxiv. Develop and implement methods to maximize service delivery.

d. Maintenance

- i. Maintain all Equipment and Revenue Vehicles and Support Vehicles in accordance with this Contract and provide qualified personnel who can assist the MCTD in troubleshooting defects and working with manufacturers to resolve problems.
- ii. Maintain, preserve, and protect all MCTD-provided Equipment, tools, and materials in good working order and in accordance with the vendors' specifications.

- iii. Notify MCTD in the event that any MCTD provided Equipment becomes damaged or is otherwise inoperable.
- iv. Provide tires and replacement tires in sufficient quantities and of sufficient quality to assure that Revenue Vehicles will be available to maintain the MCTD service and satisfy other contractual requirements.
- v. Provide all of the appropriate tools needed for the maintenance of Revenue Vehicles.
- vi. Identify, acquire, and maintain a sufficient parts inventory to properly maintain the various types and number of Revenue Vehicles in the MCTD fleet.
- vii. Properly dispose of all hazardous materials including, waste oil, grease, and automatic transmission fluid, in accordance with all applicable local, State, and Federal laws and regulations.
- viii. As requested, process the disposal or donation of any Revenue Vehicles, identified by the MCTD for disposal or donation, in accordance with procedures provided by the MCTD.
- ix. Procure and furnish fuel and track and report fuel usage for the Revenue Vehicles. Pass through actual cost of fuel to MCTD.
- x. Fuel vehicles at Marin County Civic Center Facility and track and report fuel usage.
- xi. Track and report Revenue Vehicle fuel usage at Commercial fueling locations or at Contractor's facility in accordance with MCTD policy for fuel cost reimbursement.
- xii. Work with vehicle manufacturers, dealerships and local warranty shops during the initial warranty period.
- xiii. Work with the OEM on all vehicle warranty campaigns. Make repairs to, adjustments to, updates to and programming of AVL systems, APC systems, radio communications systems, destination signs, fare collection equipment, Clipper equipment, and mobile digital surveillance systems.

e. Fares

- i. Collect fares and sell MCTD passes in a manner that complies with the MCTD's established and published fare policy.
- ii. Probe and empty fareboxes, collect and deposit and report actual revenues.
- iii. Maintain region-wide Clipper equipment and provide for clear reporting of MCTD revenues collected through this program.

D. MCTD's Responsibilities.

The MCTD's responsibilities include the following:

a. Administration

- i. Identify, develop, and plan for new and revised services, and develop service scopes for competitive procurement within the Transportation Improvement Program/Short Range Transit Plan.
- ii. Establish and periodically evaluate all policies regarding the operation and performance of the MCTD's fixed route and paratransit system.
- iii. Provide continuing service planning and capital planning (short and long range).
- iv. Coordinate informational reports and manage appropriate information systems.
- v. Establish routes and schedule services and define service areas.
- vi. Communicate with CONTRACTOR, the media, and the public.
- vii. Carry out marketing activities, including publication of timetables and route maps, and materials that increase accessibility for visually and hearing impaired persons in accordance with the ADA.
- viii. Administer and monitor this Contract, audit CONTRACTOR's books, records, and accounts, and evaluate and inspect CONTRACTOR's work and procedures for contract compliance.
- ix. Comply with Federal, State and local laws and regulations.
- x. Prepare for and provide official notice of all meetings, including those for which CONTRACTOR is responsible for the presentation of informational items.
- xi. Collaborate in the administration of the vehicle advertising program for MCTD-owned vehicles.
- xii. Audit CONTRACTOR's invoices prior to reimbursement.

b. Operations

- i. Establish operations and maintenance requirements and performance standards for CONTRACTOR.
- ii. Determine compliance with Contract requirements and assess liquated damages, as appropriate.
- iii. Investigate unsafe practices as MCTD deems appropriate.
- iv. Provide sufficient Revenue Vehicles for use in the service described in this Contract, and determine the paint schemes and logos for Revenue Vehicles, including those vehicles provided by CONTRACTOR.
- v. Provide the Equipment, tools, and materials which are specifically designated as MCTD's responsibility in this Contract.

- vi. Communicate information concerning deficiencies in service to CONTRACTOR in a timely manner.
- vii. Pay CONTRACTOR for services rendered as provided in this Contract.
- viii. Locate, establish, and maintain all bus stops and transit centers.
- c. Maintenance
 - i. Inspect, monitor and audit vehicle maintenance practices and activities for all MCTD-provided vehicles.
- d. Fares
 - i. Establish and evaluate fare policies and fare structure, and review and evaluate ridership trends.

SEC. 103 REPRESENTATIONS, WARRANTIES, AND STANDARD OF PERFORMANCE

A. CONTRACTOR Representations and Warranties. CONTRACTOR represents, warrants, and covenants as follows:

- a. Maintenance of Licenses and Permits. CONTRACTOR has, and through the Contract Term shall maintain, all required licenses, permits, status, professional ability, skills and capacity to perform the Work in accordance with the requirements of the Contract Documents, other than permits and licenses pertaining to the Facilities obtained by the MCTD.
- b. Laws, Regulations, and Governmental Approvals. CONTRACTOR has familiarized itself with the requirements of all applicable Federal, State, and local laws and regulations and the condition of any required governmental approvals, prior to entering into this Contract. CONTRACTOR acknowledges and agrees that it is responsible for complying with such laws and regulations, and, except as otherwise provided in the Contract Documents, for obtaining governmental approvals at its sole cost and without any increase in compensation on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Contract Documents.
- c. Legal Proceedings. There are no existing or threatened legal proceedings against CONTRACTOR, as of the date of execution of this Contract that would have an adverse effect on its ability to perform its obligations under the Contract, its financial condition, or its operations.
- d. Status and Authority. (a) CONTRACTOR is a corporation, joint venture, or partnership duly organized and licensed to do business in the State of California, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted; (b) if a joint venture or partnership, each member of CONTRACTOR is duly qualified to do business, and is in good standing, and will remain in good standing throughout the term of the Contract and for as long thereafter as any obligations remain outstanding under the Contract Documents; and (c) the execution and performance of this Contract will not result in a breach or default under the organizational documents of any such Person or under the terms of any indenture, loan,

credit agreement, or related instrument to which such Person is a party or by which it is otherwise bound.

- e. Variety of Vehicles. CONTRACTOR acknowledges that the MCTD has a variety of Revenue Vehicles in its fleet and may purchase an additional variety of Revenue Vehicles during the Contract Term, and agrees that the compensation to be paid to CONTRACTOR (as described in Section 401 and Attachment A) covers the full cost of operating and maintaining a variety of Revenue Vehicle types and providing the services required under this Contract, subject to any possible adjustments under Section 305F hereof.

- B. **Standard of Performance.** CONTRACTOR shall perform the work diligently, carefully, and in a timely and professional manner, in accordance with the standards and requirements in the Contract Documents and in accordance with standards and practices generally accepted as standards of the industry; and shall have and maintain all required authority, licenses, professional ability, skills, personnel, and capacity to perform its obligations under this Contract. CONTRACTOR shall perform all work as an independent CONTRACTOR.

SEC. 104 NOTICES AND TERM OF CONTRACT

- A. **Notice of Award.** Within seven (7) Days after the date this Contract is approved by the MCTD Governing Body, the CONTRACTOR will submit the following to the MCTD: (1) the insurance policies as specified in Section 405 (or a declaration page indicating coverages specified in Section 405, so long as the full insurance policy is submitted to the MCTD within twenty-one (21) calendar days of the Award); (2) the list of CONTRACTOR's Key Personnel (as identified in CONTRACTOR's Proposal in response to the RFP); and (3) CONTRACTOR's complete organizational chart.

- B. **Submittals.**

- a. 45 Day Submittals. Within forty-five (45) calendar days after Contract approval, CONTRACTOR shall submit to the MCTD, for its review and approval pursuant to Section 105F, the following plans and programs: (1) the Transition and Start-up Plan; (2) the Employee Training Program; (3) the Vehicle Maintenance Plan, and the Preventative Maintenance Program, (4) and the Safety Program.
- b. 90 Day Submittals. Within ninety (90) calendar days after Contract approval, CONTRACTOR shall submit to the MCTD for its review and approval pursuant to Section 105F, the following plans and programs specific to the MCTD contract: (1) the Drug and Alcohol Policy Program; (2) and the Safety, Security, and Emergency Management Program, (3) Emergency Preparedness Plan.
- c. Maintenance of Effort. All CONTRACTOR plans and programs shall be consistent with the plans and programs submitted with CONTRACTOR's proposal in response to the RFP, and shall contain at least the same level of effort (e.g., the required activities during transition and start-up; the hours of specific training, etc.) as set forth in CONTRACTOR's proposal.

- C. **Contract Term.** The term of this Contract is for three (3) years (the Base Contract Term), beginning on the Commencement Date, with two (2) one (1) year options, for a total possible Contract term of five (5) years. The Contract Term will commence July 1, 2018 (the Commencement Date).

D. **Assumption of Responsibility.** CONTRACTOR shall assume responsibility for the provision of Revenue Service and all other obligations under this Contract on the Commencement Date, at the conclusion of the Transition and Start-up period.

E. **Options.**

- e. Exercise by the MCTD. At least ninety (90) calendar days prior to the end of the last year of the Base Contract Term, the MCTD shall notify CONTRACTOR whether it intends to exercise the option(s). This notification shall specify whether one or more than one option is being exercised. If only the first option is exercised at that time, the MCTD shall provide notice in writing at least ninety (90) calendar days prior to the end of that option term whether the MCTD intends to exercise the remaining option. Upon receipt of said notice, the contractor shall respond in writing to MCTD of its interest to proceed with the option(s). The decisions as to whether to exercise the option(s) shall be in the MCTD's sole discretion. In addition, the MCTD also reserves the right to extend the Base Contract Term, or an option term, on a month-to-month basis, for a period of not-to-exceed six months at then-current Fixed Monthly Fee and Service Hour Rate. Performance during any such extension shall be subject to all terms and conditions of this Contract.
- f. Nature of Option and Calculation of Option Prices. The option(s) provided under this Contract is the unilateral right of the MCTD to obtain transit services from CONTRACTOR for the option term. The Revenue Hour Rate for each option year shall be as set forth for that year in Attachment A. CONTRACTOR acknowledges and agrees that it is contractually obligated, upon exercise of the option by the MCTD, to provide the services described hereunder at the fees and rates established for the applicable option year.

SEC. 105 TRANSITION AND START-UP

- A. **Timing and General Obligation.** Transition and Start-up activities of CONTRACTOR shall begin immediately upon Contract award. CONTRACTOR shall be responsible for carrying out an effective and smooth transition and start-up process, in accordance with its Transition and Start-up Plan, which will assure that it is capable of hiring necessary employees (consistent with the preference-in-hiring requirements), conducting required training, and assuming responsibility for all required operations by the date of commencement of services. The Transition and Start-up Plan, as provided to the MCTD, shall be binding on CONTRACTOR.
- B. **Vehicles and Facilities.** The MCTD will provide CONTRACTOR a minimum of three (3) Revenue vehicles for purposes of training employees during the transition period. Revenue Vehicles assigned to CONTRACTOR for training become the responsibility of CONTRACTOR and CONTRACTOR shall maintain those Revenue Vehicles in accordance with Section 306.
- C. **Training.**
 - a. Refresher and other Training. CONTRACTOR shall assure that all existing vehicle operators who remain in service under this Contract have at least eight (8) hours of training, which shall include refresher courses on safety and defensive driving as well as any other training included in CONTRACTOR's Training Program. Such refresher training shall accommodate the work schedule of the existing employees. All employees shall be trained in accordance with CONTRACTOR's Training Program, including refresher

courses identified in that Program or otherwise deemed to be reasonably necessary by CONTRACTOR, within ninety (90) calendar days after the commencement of service.

- b. Post Training Review. CONTRACTOR shall review training objectives after training new employees (including employees of the prior operator) to ensure the information provided during training was understood and absorbed so that the employees can complete their assigned tasks properly.

D. **Compensation.** MCTD, at its discretion, shall determine whether CONTRACTOR's Transition and Start-up activities are significant, identified in the Contract's proposal as such, and warrant compensation. If deemed as such, CONTRACTOR shall submit invoices to the MCTD per MCTD reimbursement policy for the identified Transition and Start-up activities, such as staff or administrative costs of participating in the initial Revenue Vehicle and Equipment inspection under subsection E of this Section. Each invoice shall be paid within ten (10) Days after receipt, subject to MCTD review to assure that invoiced amounts are necessary and reasonable transition costs.

E. **Initial Vehicle, Facility, and Equipment Inspection.**

- a. General Requirements. During the Transition period, CONTRACTOR shall actively participate with the MCTD in a detailed acceptance inspection, in accordance with this subsection, of all MCTD-provided Revenue Vehicles, Facilities, and Equipment for purposes of establishing the overall condition of the Revenue Vehicles, Facilities, and Equipment as of the time CONTRACTOR commences work under this Contract. Following the commencement of services under this Contract, CONTRACTOR shall assume responsibility, as specifically set forth in this Contract, for maintenance and repair of the MCTD-provided Revenue Vehicles, Facilities, and Equipment. In its discretion, the MCTD may coordinate this inspection with the turnover audit and inspection process for the prior Services CONTRACTOR. The MCTD may also provide CONTRACTOR access to the Facilities following the Contract award for purposes of participating in the inspection process.
- b. Third Party Inspector. The inspection under this subsection shall be performed by an independent third party, selected by the MCTD, who is experienced in transit operations and maintenance and vehicle, facility, and equipment inspections. The MCTD shall be responsible for the expenses of such inspection.
- c. Purpose of Inspection. As the owner of certain assets, the MCTD is committed to protecting those assets and ensuring that the MCTD's contractors maintain the assets in good repair. This inspection process is one means used by the MCTD to so protect those assets. The purpose of the inspections under this subsection shall be to establish the condition of each vehicle in the Revenue Vehicle fleet, the Facilities, and the Equipment, as of the inspection date, and to determine the specific repairs and maintenance that need to be performed in order to assure that the Revenue Vehicles, Facilities, and Equipment are in a safe and sound mechanical condition, properly serviced, and in good repair, Normal Wear and Tear excluded. The inspection process will be an on-going process that may include re-inspections. Once the independent third party inspector has completed each inspection or reinspection, the MCTD will release the results of the inspection report to Vehicle Verification Inspection Team, a team that includes representatives of the MCTD, CONTRACTOR, the MCTD's prior Services CONTRACTOR, and the independent third party inspector.

- d. Repairs. Any repairs indicated on the inspection report shall be addressed on an item-by-item basis and, at the MCTD's sole discretion, may be performed by the MCTD's prior Services CONTRACTOR or another entity subject to the MCTD's approval. The current Services CONTRACTOR shall be solely responsible for the cost of all repairs to the Revenue Vehicles, Facilities, and Equipment until those assets are all in good repair, and ready to turn over to CONTRACTOR (i.e., Revenue ready). Following the completion of repairs indicated on the initial inspection report, the MCTD may require the independent third party inspector to conduct an item-by-item re-inspection of the Revenue Vehicles, Facilities and Equipment to verify whether satisfactory repair of the MCTD assets has been completed. Any re-inspection report will include the third party inspector's cost estimate for outstanding repairs, parts, materials and labor (at fair market rates) for work not completed. Following receipt of the re-inspection report, the MCTD will release that report to all interested parties. Any repair identified on a re-inspection report shall be addressed, subject to verification and sign off by the MCTD (or the MCTD's designee), on an item-by-item basis and, at the MCTD's sole discretion, may be performed by the MCTD's prior Services CONTRACTOR or another entity subject to the MCTD's approval. The process of inspection, re-inspection, repair of the Revenue Vehicles, Facilities and Equipment, and the MCTD's verification of those repairs shall continue until the date that CONTRACTOR assumes responsibility for Revenue Service under this Contract. Nothing in this Section shall be interpreted to relieve the MCTD's prior CONTRACTOR of its obligation to maintain the MCTD-provided assets during the transition period. The MCTD will take all reasonable steps to assure that all repairs and necessary maintenance are completed by the date CONTRACTOR assumes responsibility for Revenue Service under this Contract. If any repairs have not been completed by such Revenue Service date, the MCTD will have such repairs completed by a third party, or by CONTRACTOR.
 - e. Turnover Audit and Inspection. Prior to the termination of this Contract, the existing Revenue Vehicles and the Equipment shall be subject to the turnover audit and inspection process set forth in Section 306G.
- F. **Review of CONTRACTOR Plans.** The MCTD shall review each of CONTRACTOR's plans and programs submitted under Section 104C and shall either (1) approve such plan or program as submitted; or (2) require CONTRACTOR to make reasonable revisions to such plan or program, in which event CONTRACTOR shall promptly make such revisions (after any necessary discussions with the MCTD) and resubmit the plan or program involved to the MCTD for its approval. After approval under this subsection, a plan or program may not be modified without prior written consent of the MCTD.

ARTICLE 2—PERSONNEL REQUIREMENTS

SEC. 201 GENERAL REQUIREMENTS FOR CONTRACTOR PERSONNEL

- A. **In General.** CONTRACTOR shall be responsible for providing qualified personnel capable of performing all of CONTRACTOR's responsibilities and obligations under this Contract. The total number and qualifications of personnel necessary for operations, maintenance, and other service requirements shall be in accordance with this Contract and with CONTRACTOR's Staffing and Personnel Plan, set forth in Attachment F. CONTRACTOR shall file and maintain a current list of all employees, by number and by function (i.e., operators, dispatchers, schedulers, mechanics, supervisors, etc.) working under this Contract every fiscal quarter. Such written update shall specifically identify all new employees, their positions, and where applicable, their training status.

A. **Key Personnel.**

- a. Key Personnel List. In order to manage and perform the service required by this Contract, the CONTRACTOR will provide and maintain throughout the Contract Term, the following Key Personnel:
 - i. General Manager
 - ii. Operations Manager
 - iii. Maintenance Manager
 - iii. Safety and Training Manager
 - b. Dedication to Project. Unless otherwise specifically authorized in writing by the MTCD: (a) the Key Personnel providing services under this Contract shall be the same individuals identified in the CONTRACTOR's response to the RFP and in the Staffing and Personnel Plan in Attachment F; (b) all Key Personnel shall be full time to the project under this Contract; and (c) the CONTRACTOR shall provide a separate individual for each Key Personnel position.
 - c. Changes and Vacancies. CONTRACTOR shall provide the MTCD at least thirty (30) Days advance notice prior to any contemplated change to Key Personnel, and the MTCD must provide written approval of such change prior to the action being taken. CONTRACTOR shall fill any vacancy in a Key Personnel position, within sixty (60) calendar days of the date of the vacancy, with an individual whose qualifications and experience meet the requirements of the position. Subject to the MTCD's approval, a vacancy may be temporarily filled by a qualified individual on an interim basis while a more extensive search for a replacement is conducted. Failure to provide a satisfactory replacement for a Key Personnel position within sixty (60) calendar days shall result in a deduction of the amount of the salary and benefits of the individual, during the full period of the vacancy, from the MTCD's monthly payments to the CONTRACTOR.
 - d. MTCD Right to Remove. The MTCD reserves the right to direct the removal of any Key Personnel during the term of the Contract if the MTCD determines such removal is in the best interest of the MTCD or the Project.
- B. **General Manager.** CONTRACTOR's General Manager shall supervise the day-to-day operation of the service, as well as the management of the project's accounts and operating records. The General Manager or individuals designated under subsection C of this Section shall be available by telephone or in person during all hours of operations to make decisions as necessary at the request of the MCTD. The General Manager shall have an office onsite at the CONTRACTOR's facility.
- C. **Operations Manager.** CONTRACTOR's Operations Manager shall provide supervision and management of the project's accounts and operating records. The Operations Manager shall be located onsite at the CONTRACTOR's facility.
- D. **Maintenance Manager.** CONTRACTOR's Maintenance Manager shall manage and supervise maintenance staff in the repair, preventive maintenance, servicing and cleaning of MCTD owned and CONTRACTOR owned vehicles. The Maintenance Manager shall be located onsite at the CONTRACTOR's facility.

- E. **Additional Management.** In addition to the General Manager, CONTRACTOR shall designate two (2) members of management with the authority and responsibility to (1) make binding decisions, acting as agent for CONTRACTOR; and (2) respond in person to any emergency or accident involving extensive property damage or injuries. CONTRACTOR shall provide the names, titles, and telephone numbers of those individuals to the MCTD.
- F. **Corporate Support.** CONTRACTOR shall not include in its personnel costs or corporate support expenses charged to the MCTD any time spent by Key Personnel on matters other than the performance of services for the MCTD under this Contract. CONTRACTOR may not use any Revenue Vehicles or Equipment provided by the MCTD, for any work not directly related to the performance of services for the MCTD under this Contract. The MCTD reserves the right to review and audit CONTRACTOR's compliance with these prohibitions at any time during the Contract term. If and to the extent that the MCTD determines that CONTRACTOR has engaged in any such prohibited use, the MCTD reserves the right, in its discretion, to bill CONTRACTOR for the fair market value of such use, or to deduct the fair market value of such use from CONTRACTOR's monthly invoice.
- G. **MCTD Project Manager.** All notices and communications required to be submitted by CONTRACTOR under this Contract shall be submitted to the MCTD Project Manager.

SEC. 202 PERSONNEL PERFORMANCE STANDARDS AND REQUIREMENTS

- A. **Personnel Standards.** CONTRACTOR shall require that all personnel providing any services for the MCTD under this Contract maintain a professional, courteous attitude toward MCTD customers, including answering to the best of their abilities all passenger questions (including questions about schedules) and performing other tasks as directed. CONTRACTOR shall use appropriate employee screening and selection criteria (including the hiring standards set forth in this Section) to assure the employment of the best qualified applicants available, emphasizing competence, reliability, and good customer service skills. Promptly upon the MCTD's request, CONTRACTOR shall remove from any work under this Contract any employee who the MCTD considers unsuitable for such work or who has displayed any act of discourtesy, rudeness, use of profanity, or any other act deemed unacceptable by the MCTD (including any act inconsistent with CONTRACTOR's Standards of Conduct).
- B. **Personnel Policies.**
 - a. General Requirement. CONTRACTOR shall follow its personnel program and policies in carrying out recruitment, hiring, training, and performance reviews, as set forth in its Staffing and Personnel Plan. CONTRACTOR shall comply with its Staffing and Personnel Plan throughout the term of this Contract. CONTRACTOR shall give written notice to the MCTD of any material changes in its personnel program and policies.
 - b. Compliance with Applicable Law. CONTRACTOR's personnel policies and personnel wages and work hours shall be in accordance with applicable local, State, and Federal laws and regulations.
 - c. Standard of Conduct. CONTRACTOR shall apply its standards of conduct, which are subject to MCTD-approval. All of CONTRACTOR's employees performing work under this Contract shall strictly adhere to CONTRACTOR's standards of conduct. Material changes in these standards shall require prior written approval by the MCTD. Any deviation from the MCTD-approved standard of conduct by any of CONTRACTOR's employees shall be grounds for removal of the employee from MCTD project services. Failure of

CONTRACTOR to enforce these standards shall be grounds for termination of this Contract for default under Section 410.

d. Background Checks and Hiring Standards.

- i. CONTRACTOR shall make all reasonable efforts to ensure that employees having contact with the public in the course of their assigned duties are of good moral character. CONTRACTOR, prior to hiring, shall conduct employee candidate background checks of all positions, especially those positions to be considered safety-sensitive in nature. The MCTD considers all positions to be safety-sensitive unless they are administrative in function only.
- ii. The background checks conducted by CONTRACTOR shall be in accordance with MCTD standards and applicable Federal and State law, and shall include the use of a licensed background check vendor to carry out criminal background checks. Criminal background checks must include arrest and conviction records (county, state, and nationwide) for all jurisdictions in which the applicant has resided in the previous ten (10) years.
- iii. Any decision regarding whether or not to hire an individual on the basis of a prior felony or misdemeanor conviction record shall be made by CONTRACTOR on a case-by-case basis, taking into account the nature and gravity of the criminal offense committed by such individual, the relationship of such offense to the nature and requirements of the job involved, considerations of business necessity, the time elapsed since the commission of the offense and/or the completion of the sentence, and other relevant considerations set forth in applicable EEOC guidance.
- iv. CONTRACTOR shall ensure that employees are tested in accordance with the FTA Alcohol and Drug Testing Regulations, including: pre-employment, reasonable cause, return to duty, post-accident, and random testing in accordance with 49 CFR Part 655. CONTRACTOR shall adjust annual random testing rates to comply with any future amendments to the Federal requirements.
- v. CONTRACTOR shall maintain all records relating to background checks conducted on all employees providing services under this Contract. For purposes of audit and oversight by the MCTD, and unless prohibited by law, CONTRACTOR shall make all background check records and drug and alcohol reporting available to MCTD representatives for the periods and at the location specified in Section 504 of this Contract.

- C. **Staffing Levels.** CONTRACTOR shall employ and provide, throughout the Contract Term, no less than the number of personnel by position as specified in its Staffing and Personnel Plan. Any changes to the level of staffing must be approved by the MCTD and may, in the MCTD's discretion, require the negotiation of a reduction in the applicable Fixed Monthly Payment or Service Hour Rate. CONTRACTOR shall provide the MCTD written notification of any variance to the staffing levels that could impact service, immediately upon the occurrence of such variance. CONTRACTOR shall accompany any such notification with a "recovery plan" that addresses personnel shortages. Should any key position be vacant for more than 60 days, the salary for that position for the time in which it remained vacant will be credited back to Marin Transit.

D. Training.

- a. General Requirement. CONTRACTOR shall require that all employees of CONTRACTOR complete its Training Program, as set forth in Attachment G. CONTRACTOR shall be responsible for implementing all aspects of its Training Program throughout the term of the Contract. Training shall include courses and instruction in all aspects of the operation and maintenance of services under this Contract. Any material changes to CONTRACTOR's Training Program shall require prior written approval by the MCTD.
- b. ADA Sensitivity Training. CONTRACTOR shall require vehicle operators, dispatch personnel, schedulers, public contact personnel, and supervisory employees to complete ADA sensitivity training to better prepare those employees to address situations relating to the physical and cognitive disabilities of passengers. This training should give particular emphasis to situations that may arise in working with passengers who experience cognitive or psychiatric impairments.
- c. Drug and Alcohol. CONTRACTOR shall require that all safety-sensitive employees, as defined by the FTA, complete drug and alcohol training in accordance with 49 CFR Part 655. In addition, CONTRACTOR shall provide a Drug and Alcohol Program Manager who has been trained, through a FTA-approved Drug and Alcohol Program Management course, within ninety (90) Days after Contract award, or as soon thereafter as practical, based on course availability.
- d. Required Safety and Security Training. CONTRACTOR shall provide the following safety and security training, including annual refresher training, maintained in a separate employee file:
 - a. Emergency Response training for all employees.
 - b. National Incident Management System (NIMS) training and Incident Command System (ICS) training for CONTRACTOR operations and safety managers as specified in Section 316B(a).
 - c. Training in MCTD and CONTRACTOR policies, procedures, and protocols, including safety, security and incident response plans for all employees, position appropriate.
 - d. OSHA-required training (i.e., Occupational Safety and Health Training, Personal Protective Equipment, Drug-Free Workplace, Lock Out Tag Out, Confined Spaces, Hazardous Communications, etc.).
- e. Timing of Training. CONTRACTOR shall implement its Training Program in a way that will assure that vehicle operator training is not conducted during peak service hour periods at the expense of providing on-time Revenue Service.
- f. Costs of Training. CONTRACTOR acknowledges and agrees that all costs of training required for this Contract are included in its Service Hour Rate, including the cost of training associated with any new Revenue Vehicles.
- g. Post Training Testing Program. CONTRACTOR shall, on a regular basis throughout the term of the Contract, conduct the post-training testing program developed by CONTRACTOR to ensure that the information provided during training was understood

and absorbed by the employees. Any employee who receives a failing grade will be required to receive additional training and testing until that employee receives a passing grade. Until the employee receives a passing grade, CONTRACTOR shall not permit that employee to perform any function that could jeopardize the safety of the MCTD or the MCTD's customers.

E. Uniforms.

- a. General Requirement. CONTRACTOR shall cause all vehicle operators, dispatchers and personnel available to the public to be attired in such uniforms or clothing as specified by CONTRACTOR and approved by the MCTD. The cost of such uniforms shall be borne by CONTRACTOR and is included in the Service Hour Rate. CONTRACTOR shall submit a sample of the uniform to the MCTD for approval within forty-five (45) calendar days of Contract award.
- b. Cost of Uniform Changes. Any cost associated with a change in uniforms proposed by CONTRACTOR shall be borne by CONTRACTOR. CONTRACTOR shall submit to the MCTD for its approval a sample of any proposed change in uniform to be worn by each uniformed job category. Any cost associated with a change in uniform required by the MCTD shall be the responsibility of the MCTD.

F. Labor Productivity. CONTRACTOR shall promote productivity and efficiency in carrying out this Contract by implementing strategies that serve to maximize efficiency of the employee workforce.

G. Passenger Comments. CONTRACTOR shall assure that all project personnel report all passenger complaints, comments, vehicle issues and any operational problems to MCTD in accordance with the process set forth in Section 502A of this Contract. Passenger complaints, comments, vehicle issues and any other operational problems shall be entered in TransTrack Daily Customer Module at the time of receipt. CONTRACTOR shall enter information regarding follow-up response and corrective actions taken to address initial issue in TransTrack Daily Customer Module. CONTRACTOR shall provide information requested by the MCTD and otherwise cooperate with the MCTD in the resolution of any comments.

H. Compliance with California Labor Code Sections 1070 et seq. CONTRACTOR and any Subcontractors will be responsible for full compliance with California Labor Code Section 1070, et seq. The law establishes incentives to those submitting proposals for public transit service contracts that will retain qualified employees of the prior Contractor or its subcontractor to perform the same or similar work for a period of at least 90 days. Pursuant to the law, the CONTRACTOR must have declared in its RFP proposal whether or not it and its subcontractor(s) will retain the employees (as defined by California Labor Code Section 1071(d)) of the prior Contractor or subcontractor(s), except for reasonable and substantiated cause, for a period of at least 90 days. The CONTRACTOR that declares it will retain such employees will be responsible for the duties and obligations provided in California Labor Code Section 1072, including making a written offer of employment to each employee to be retained and in the event fewer employees are necessary under the new contract, retaining qualified employees by seniority within the job classification. Nothing in California Labor Code Section 1070 et seq. requires CONTRACTOR to pay the same wages or offer the same level of benefits provided by the prior Contractor. The CONTRACTOR will also be subject to the enforcement provisions of California Labor Code Section 1073 for any violations of this law.

Within three working days after the Contract has been awarded, the prior Contractor and its subcontractor(s) will provide to CONTRACTOR the name, address, date of hire, wage, benefit level and job classification of each employee employed at the locations covered by the prior Contractor's contract. The MCTD will notify the prior Contractor and its subcontractor(s) of the identity of CONTRACTOR as soon as practicable to facilitate the transfer of this information.

In order to facilitate the provisions of the law, the MCTD requires that upon the commencement of the Contract and throughout the full term of the Contract, that CONTRACTOR maintain a list of all employees providing the services required under the Contract, which includes the information above and must indicate which employees were employed by the prior Contractor and its subcontractor(s), if any. CONTRACTOR must also maintain a list of all employees of the prior Contractor that were not retained by CONTRACTOR, and such list must indicate the reasons why such employees were not retained.

Upon request from the MCTD, CONTRACTOR must provide such lists to the MCTD within 10 days of such request. MCTD has the ability to request such lists throughout the term of the Contract.

CONTRACTOR will be responsible for defending, and will hold MCTD harmless from, any claims or controversies alleging any violation or breach of Labor Code Section 1070 et seq., whether made by CONTRACTOR's own employees or employees of the prior Contractor or its subcontractor(s), arising from or related to the terms and conditions of employment of employees hired to work for CONTRACTOR as of the effective date of this Contract.

Notwithstanding any other provision of this Contract, no cost of liability for which CONTRACTOR is responsible under this paragraph will be deemed an allowable cost payable to CONTRACTOR or claim or liability for which CONTRACTOR is entitled to indemnification or reimbursement from the MCTD. CONTRACTOR will be exclusively responsible for satisfaction of all obligations that may be owed to its employees of the prior Contractor, pursuant to Labor Code Section 1070 et seq., both during and subsequent to the term of the Contract.

At least six months prior to the end of the Contract, CONTRACTOR will be required to provide the MCTD a complete list of employees who have participated in providing the MCTD services. This list of employees will indicate the length of service of each employee, their job title and description, and their current salary. This information may be distributed by MCTD to future bidders for a new contract that will commence whenever the current contract term ends. CONTRACTOR must provide updates on a monthly basis of the employee lists after the original employee list has been submitted. CONTRACTOR's obligation to provide monthly updates of the employee lists will last until the end of the Contract term. If a new contract is awarded to a different Contractor at the end of CONTRACTOR's Contract, CONTRACTOR must provide to the new Contractor the name, address, date of hire, wages, benefit level, and job classification of each employee employed at CONTRACTOR's locations covered by CONTRACTOR's Contract within three working days after CONTRACTOR has been notified by the MCTD of the identity of the new Contractor.

I. Collective Bargaining Agreements.

- a. CONTRACTOR Collective Bargaining Agreement Negotiations. CONTRACTOR shall negotiate a collective bargaining agreement with any labor organization that is designated or selected, in accordance with applicable law, as the collective bargaining representative of CONTRACTOR's employees. Any such collective bargaining agreement shall include provisions addressing health benefits, retirement, grievance procedures, recognition of seniority, and related matters that are normally the subject of collective bargaining between management and labor in the private sector transportation industry.

- b. Limitations on Term. CONTRACTOR shall not enter into a collective bargaining agreement or other labor contract with labor organization representing its workforce for a longer term than the Base Term of this Contract with the MCTD, or if any option is exercised, for longer than the term of that option.
 - c. No Assumption. Nothing in this Contract, including this subsection hereof, shall be construed as requiring CONTRACTOR to assume or otherwise be bound by the terms and conditions of the collective bargaining agreement or other labor contract of the prior operator of Services for the MCTD.
- J. **Responsibility for Accrued Paid Time Off.** CONTRACTOR shall pay out to employees any accrued vacation, sick time, or other paid time off prior to the termination of this Contract or any option years exercised. Such payments are the sole expense of CONTRACTOR and no additional compensation shall be provided by the MCTD for this CONTRACTOR expense.
- K. **Retirement Obligations.** CONTRACTOR shall also be solely liable and responsible for any retirement obligations or liabilities to its employees, under any 401(k) or other retirement plan. The responsibility for any such obligations and liabilities shall survive the termination of this Contract.

SEC. 203 VEHICLE OPERATORS

- A. **General Requirement.** CONTRACTOR shall employ and maintain, throughout the Contract Term, a level of vehicle operators sufficient to meet the daily operator shift requirement, as well as sufficient extra-board and stand-by operators to allow for the expected call-outs, vacations, no-shows, etc., typically experienced in a transit system of the MCTD's size. All operators shall be fully trained and qualified to operate the vehicles for the services provided under this Contract.
- B. **Requirements for Operators.** CONTRACTOR shall have rules and requirements in place, and shall provide such rules and requirements to each vehicle operator, to ensure that each operator employed by CONTRACTOR satisfies the following minimum requirements:
- a. Each vehicle operator shall have a valid California Commercial Driver's License, Class B or above with passenger endorsement, as well as any other licenses required by applicable local, State, and Federal laws and regulations.
 - b. Each vehicle operator shall be subject to periodic as well as random testing related to drug and alcohol use conducted by CONTRACTOR in accordance with applicable Federal laws and regulations. A summary report of drug testing results (exclusive of individual test results) will be provided to the MCTD upon request. Any vehicle operator who does not pass the medical examination or whose drug/alcohol screening tests do not comply with applicable standards for alcohol or drug use shall not be permitted to operate any vehicle used to provide service under this Contract.
 - c. Each vehicle operator shall be alert, careful, and competent in terms of driving ability and habits.
 - d. Each vehicle operator shall be courteous to all passengers.
 - e. Each vehicle operator shall be neat and clean in appearance, and shall wear a regulation uniform and identification badge at all times while in revenue service.

- f. Vehicle operators shall have completed CONTRACTOR's Training Program and shall be fully trained in defensive driving and vehicle handling in accordance with a defined defensive driving program, prior to operating any vehicle in Revenue Service. CONTRACTOR shall also maintain ongoing training for vehicle operators.
- g. Adequate numbers of fully-qualified vehicle operators shall be available as back-up operators during all operating hours to ensure consistent and reliable service.
- h. Vehicle operators shall be trained in, and be cognizant of, all operational procedures relating to the MCTD's Services, including a thorough knowledge of the routes and schedules.
- i. Vehicle operators shall be trained in, and be cognizant of, the technology (including on-board technology) of the vehicles they operate.
- j. Vehicle operators shall, pursuant to requests by the MCTD, hand out notices to passengers or otherwise render assistance in MCTD's monitoring and supervising operations.
- k. Vehicle operators shall honor passes, sell specific MCTD passes on board, and collect all other fare media authorized by the MCTD.
- l. Vehicle operators must immediately report to CONTRACTOR any traffic accidents, passenger accidents, or other non-routine events.
- m. Vehicle operators are not permitted to use personal cell phones or other electronic devices (including entertainment games but excluding global positioning systems), or to use MCTD-provided or CONTRACTOR-provided cell phones or electronic devices for personal purposes while operating in Revenue Service.
- n. Tobacco products may not be used inside any MCTD vehicle, in proximity to any MCTD vehicle, and their use is prohibited at or near fuel tanks or pumps, and in any restricted areas.
- o. Vehicle operators must have in their possession at all times while on duty, a valid California CDL, and shall wear and display identification badges at all times while on duty. All such licenses, cards and badges shall be subject to inspection by the MCTD at any time.
- p. Vehicle operators, prior to beginning Revenue Service, shall inspect their assigned vehicles daily in a timely manner before pulling out of the yard in accordance with Federal, State, and MCTD requirements and CONTRACTOR procedures. If there are any defects, the vehicle operator must enter the defect on a CONTRACTOR-provided pre-trip/post trip inspection form and immediately report the defect to a designated CONTRACTOR operations staff member for determination of usability of the vehicle. All reported defects shall also be validated by CONTRACTOR maintenance staff. The vehicle operator must sign and date the pre-trip/post trip inspection form prior to leaving the bus yard. The pre-trip/post trip inspection form shall remain with the vehicle during that day and shall be replaced on a daily basis.
- q. Vehicle operators shall immediately report mechanical breakdowns and/or in-service failures of Revenue Vehicles by radio or via the operators' MDTs to Dispatch. Upon

receipt of such report, CONTRACTOR shall immediately document the service interruption log and notify vehicle maintenance staff of the occurrence.

- r. All vehicle operators shall demonstrate, through examination, an ability to speak, read, and write Standard English.

C. Hiring Principles.

- a. Satisfactory Driving Record. CONTRACTOR shall not employ any person as a vehicle operator whose driving record is not acceptable as provided in CONTRACTOR's Staffing and Personnel Plan. This information should be compiled and verified in conjunction with Section 202B(d) and paragraph (3) of this subsection.
- b. Employment Experience. Prior to offering employment to any person as a vehicle operator, CONTRACTOR shall obtain from each such person detailed information concerning such person's employment experience, driving record, professional driving experience, motor vehicle violations and accidents, criminal history, personal and character references, and complaints filed against such person in the course of any employment as a professional driver, whether by any bus service provider or otherwise. CONTRACTOR shall investigate and verify the accuracy of the information obtained from all job applicants.
- c. Background Checks and Re-Checks. CONTRACTOR shall perform the background checks described in Section 202B(d) prior to offering employment to any person as a vehicle operator. The background check will include, at a minimum, a Motor Vehicle Record (MVR) report and a report from a licensed background check vendor. CONTRACTOR shall perform a MVR re-check every year for all vehicle operators and other employees in safety sensitive positions, within thirty (30) Days of the anniversary of their individual hiring dates. CONTRACTOR will provide the MCTD a summary report for all background checks and re-checks on request.

D. Training Requirements. CONTRACTOR shall conduct training for vehicle operators in accordance with its stated Training Program, which must include both classroom and behind-the-wheel training for newly hired employees and experienced drivers (e.g., employees of the prior operator). The MCTD may monitor any training provided. The vehicle operator training program shall contain, at a minimum, the following components:

- a. California Commercial Driver's License, Class B or above, driving and testing preparation;
- b. MCTD Services policy and procedures;
- c. ADA Sensitivity;
- d. Proper on-board ADA passenger securement;
- e. Passenger Empathy and Sensitivity;
- f. Passenger Assistance Training;
- g. Map reading and interpretation;
- h. Customer courtesy, problem resolution, and instruction in dealing with difficult customers and situations;

- i. Safety, bus maneuvering, defensive driving and accident procedures;
- j. Transit safety, security and incident command system procedures;
- k. Effects and consequences of prohibited drug use on personal health, safety, and the work environment, including addressing signs and symptoms that may indicate drug use;
- l. Correct operation of the farebox, destination signage, MDT, and Clipper equipment;
- m. Correct operation and system status indications of the Mobile Digital Surveillance System.

SEC. 204 DISPATCHERS

- A. **General Requirement.** CONTRACTOR shall employ and maintain, throughout the Contract Term, properly trained dispatch personnel in sufficient numbers and with an adequate mix of skills, to assign vehicles and operators, facilitate the daily planned deployment of service, assist road supervisors and vehicle operators with in-service problem resolution, and to operate the Communication System.
- B. **Requirements.** All dispatch personnel shall demonstrate, through examination, an ability to speak, read, and write Standard English.
- C. **Assignment.** Contractor shall ensure that dispatch personnel are on duty during MCTD Revenue Service, weekdays, weekends, holidays, with sufficient coverage during morning and evening work shifts.
- D. **Components of Dispatcher Training.** All dispatch personnel are required to complete CONTRACTOR's Training Program. CONTRACTOR shall also maintain ongoing training requirements for dispatchers. Training programs shall contain, at a minimum, the following components:
 - a. Communications System and use of related Services software and technology tools;
 - b. Local geography familiarization;
 - c. MCTD Services policies and procedures;
 - d. DOT and MCTD emergency action plan implementation strategies;
 - e. Customer relations, empathy, and problem resolution;
 - f. Accident/incident procedures;
 - g. Transit safety, security, and incident command system procedures;
 - h. Mapping and schedule familiarization;
 - i. Vehicle change procedures and dynamic scheduling (methods and practices);
 - j. Vehicle operator training; and

- k. Reporting and troubleshooting vehicle maintenance problems;
 - l. Familiarization with farebox, MDT, Clipper, and other on-board equipment.
- E. **Drug and Alcohol Testing.** All dispatchers shall be subject to drug and alcohol testing in accordance with applicable Federal laws and regulations.

SEC. 206 ROAD SUPERVISORS

- A. **General Requirement.** At a minimum, CONTRACTOR shall have on duty, throughout the Contract Term, sufficient road supervisors necessary to properly manage operations and Revenue Vehicles in service and to respond to incidents within sixty (60) minutes or prior to the next scheduled trip, during all hours of operations. Road supervisors shall be deployed in a manner consistent with CONTRACTOR's Proposal responding to the RFP, and shall be equipped with the appropriate communication and safety equipment, and assigned to a designated CONTRACTOR-provided accessible or lift/ramp equipped road supervision vehicle suitable for response to emergencies, in-service problems, and other events.
- B. **Responsibilities and Requirements.** Road supervisors shall be responsible for coordinating runs, ensuring adherence to Manifest schedules, assisting passengers, accident investigation, communicating with the dispatch personnel at Facilities and with vehicle operators, assisting in the implementation of CONTRACTOR's Operations Management Plan, and carrying out such other responsibilities as CONTRACTOR may establish. CONTRACTOR shall assure that all road supervisory personnel are fully trained in all aspects of the MCTD's Services, including rules and regulations, routes, mapping and schedules, emergency procedures, safety, ADA requirements, reporting protocols, and other requirements. CONTRACTOR shall assure that sufficient supervisors are present during peak hour, pull-out periods to coordinate the timely and orderly assignment and departure of vehicles.
- C. **Training Requirements.** All supervisors employed by CONTRACTOR shall fully meet all training requirements for both vehicle operators and dispatchers, as required by the terms of this Contract and the CONTRACTOR's Training Program, prior to being placed into service as a supervisor.
- D. **Drug and Alcohol Testing.** All supervisors shall be subject to drug and alcohol testing in accordance with applicable Federal laws and regulations.

SEC. 207 MAINTENANCE PERSONNEL

- A. **General Requirement.** CONTRACTOR shall employ and maintain, throughout the Contract Term, maintenance personnel in sufficient numbers, and with the appropriate mix of skills, to maintain and service the assigned mix of Revenue Vehicles. At a minimum, one "A" level mechanic will be available at any given time during scheduled revenue hours throughout the day. The maintenance workforce must include a complement of mechanics collectively capable of repairing and maintaining all systems of the Revenue Vehicles, including air conditioners, heating units, engines and transmissions, differentials, suspension systems, brakes, electrical systems, wheelchair lifts and ramps and other passenger assist mechanisms, and all other related systems consistent with light, medium, and heavy duty transit fleet maintenance functions. CONTRACTOR shall ensure that the complement of mechanics assigned to this Contract collectively have, at a minimum, knowledge of and the ability to:
- a. Complete reliable and safe preventive maintenance inspections;

- b. Independently diagnose and repair defects on systems as necessary;
- c. Use automotive, truck, and heavy duty transit test equipment and specialized tools effectively;
- d. Obtain precision measurements as required;
- e. Diagnose and perform repairs on systems related to automotive, light, medium, and heavy duty transit vehicles;
- f. Diagnose, repair, and maintain vehicle drivetrains, including engines, transmissions, driveshaft, differentials and exhaust systems, including after treatment;
- g. Diagnose, repair, and maintain vehicle brake systems, suspension/steering, electrical/electronic systems, and related sub components;
- h. Diagnose, repair, and maintain air conditioning, heating and ventilation systems;
- i. Adjust, repair, or replace damaged body parts, window glass, window inset film, and perform structural repairs;
- j. Diagnose, repair, and maintain wheelchair lifts and ramps;
- k. Read and understand parts and repair manuals, and electrical/vacuum schematics;
- l. Properly understanding and utilizing a Materials Safety Data Sheet (MSDS) book.

B. Skills and Availability.

- a. Requirements. CONTRACTOR shall ensure that the skills, capability, and availability of sufficient vehicle maintenance personnel who are adequately matched to the type of maintenance and repairs needed for the all Services at the time they are needed. This level of staffing shall be identified in CONTRACTOR's Vehicle Maintenance Plan. (VMP).
- b. Scheduling of Maintenance. CONTRACTOR's VMP shall ensure that all maintenance activities are carried out at times that do not interfere with scheduling of Revenue Vehicles to meet peak period service demands.
- c. Availability of Mechanics. CONTRACTOR's VMP shall ensure sufficient fully qualified, experienced vehicle mechanics shall be available during all hours of service to respond to any in-service failures or Revenue Vehicle or equipment problems that arise in the yard during the pre-trip and post trip vehicle inspections.

C. Training. Training for all maintenance personnel shall be in accordance with the CONTRACTOR's Training Program and shall include Automotive Service Excellence ("ASE") certification training, vendor-provided training, maintenance safety training and security and emergency preparedness training.

- a. Components of Maintenance Training. Training programs must contain, at a minimum, the following components:
 - a. Wheelchair lift and ramp manufacturers' training;

- b. Hazmat and storm water training;
 - c. OSHA and DOT compliance, health and safety training;
 - d. Hazardous waste operations and emergency response training;
 - e. Lockout/tagout training;
 - f. Material handling and storage requirements training;
 - g. Forklift or loading equipment training (if applicable);
 - h. Vehicle Fire Suppression Training; and
- b. New Vehicle Training. CONTRACTOR will cooperate with the MCTD to provide space for and schedule all vehicle mechanics for new vehicle service training, as needed with the receipt of either expansion or replacement vehicles. The MCTD, CONTRACTOR, and the supplier of the new vehicles will work together to develop an appropriate vehicle maintenance training plan.

D. Fueling and Cleaning.

- a. General Requirement. CONTRACTOR shall have on duty qualified personnel to fuel and clean the required number of Revenue Vehicles for daily pull-outs.
- b. Knowledge Required. CONTRACTOR shall ensure that all personnel shall have full knowledge of vehicle fueling procedures and vehicle cleaning/detailing programs as required by the Contract.
- c. Ability Required. CONTRACTOR shall ensure that all personnel are required to have the training, skills and ability to:
 - a. Operate vehicles to facilitate a safety brake inspection procedure;
 - b. Maintain up-to-date, accurate records of vehicle fueling and vehicle cleanliness requirements; and
 - c. Properly clean the interior and exterior of all MCTD vehicle types.

E. License Requirements. CONTRACTOR shall require all vehicle mechanics to maintain a valid California CDL, Class B or above.

F. Skill Level. CONTRACTOR shall maintain the full staffing levels, by skill level category and number, as identified in CONTRACTOR's Staffing and Personnel Plan. In addition, all maintenance personnel performing mechanical repairs shall be ASE certified in the category in which they are performing repairs. In addition, every technician who performs air conditioning repairs is required to hold a Clean Air Act, Section 609 certification. If the total number of Revenue Vehicles assigned by the MCTD to CONTRACTOR changes, CONTRACTOR shall maintain the proposed ratio of maintenance personnel, by skill level category, to Revenue Vehicles, as detailed in CONTRACTOR's Staffing and Personnel Plan. The skill levels required for CONTRACTOR's maintenance personnel are as follows:

- a. **A-Level maintenance technician or mechanic job duties** are defined as performing preventive maintenance, diagnosis, service and repair of steering, suspension, brakes, engines, transmissions, differentials, electrical, wheelchair lifts, and air conditioning systems. This level technician or mechanic shall have the ability to perform part analysis on damaged parts and assist with inventory control. A-Level maintenance technicians or mechanics must have three (3) years or more of automotive/diesel repair experience or have graduated from an automotive technology course at an accredited trade school or college and have two (2) years or more experience.
 - b. **B-Level maintenance technician or mechanic job duties** are defined as performing preventive maintenance, diagnosis, service and repair of steering, suspension, brakes, engines, transmissions, differentials, electrical, wheelchair lifts, and air conditioning systems. This level technician or mechanic shall have the ability to perform part analysis on damaged parts and assist with inventory control. B-Level maintenance technicians or mechanics must have a minimum of two (2) years or more of automotive/diesel repair experience or have graduated from an automotive technology course at an accredited trade school or college and have one (1) year or more experience.
 - c. **C-Level maintenance technician or mechanic job duties** are defined as performing general preventive maintenance including tire repair and replacement, lube/oil/filter servicing, brake jobs and general minor maintenance repairs. This position may also include fueling responsibilities and assisting with inventory control. C-Level maintenance technicians or mechanics must have a minimum of one (1) year experience of automotive/diesel repair and or a combination of training and experience or have graduated from an automotive technology course at an accredited trade school or college.
 - d. **ASE Master Certification** - At least twenty-five (25%) of all mechanics must be ASE master certified on medium or heavy duty trucks or possess comparable certification. This requirement must be achieved by the end of the first year of the Base Contract Term. Certifications must be kept current throughout the duration of the Contract.
- G. **Drug and Alcohol Testing.** All maintenance personnel shall be subject to drug and alcohol testing in accordance with applicable Federal laws and regulations.

ARTICLE 3 -- OPERATIONS AND MAINTENANCE RESPONSIBILITIES

SEC. 301 VEHICLES

- A. **MTCD Responsibility.** The MTCD will provide the CONTRACTOR with sufficient Revenue Vehicles for operation of the Fixed Route Services required to be provided under this Contract. The MTCD may, in its sole discretion, change the mix of Revenue Vehicles and/or add Revenue Vehicles to the fleet during the Contract Term, and such actions shall not be the basis for any increase in the CONTRACTOR's Fixed Monthly Fee or Service Hour Rate, except as may be provided under Section 305F.
- B. **Use of Vehicles.** The Revenue Vehicles provided by the MCTD under this Contract shall be used by CONTRACTOR only for the Services covered by this Contract, except as otherwise authorized or directed by the MCTD in writing.
- C. **Inspection of New Vehicles.** Upon taking possession of any new Revenue Vehicles furnished by the MCTD during the Contract Term, CONTRACTOR shall inspect such Revenue Vehicles and

notify the MCTD in writing within seventy-two (72) hours if any such Revenue Vehicles have defects, unless more than three (3) vehicles are under inspection at one time, in which event the notice period shall be within five (5) Days after taking possession. If CONTRACTOR subsequently discovers latent defects, including excessive wear to tires, in any new MCTD-provided Revenue Vehicles which could not have been discovered by a reasonable inspection at the time of receipt, CONTRACTOR shall notify the MCTD in writing within seventy-two (72) hours after it determines that such latent defects exist.

D. CONTRACTOR Responsibility.

- a. **Support Vehicles.** CONTRACTOR shall be responsible for providing sufficient Support Vehicles to support the Services provided under this Contract. Such Support Vehicles shall include vehicles for road supervision, inspection, and maintenance functions, including tow trucks, forklifts, and maintenance service vehicles. The number of Support Vehicles provided shall be at the discretion of CONTRACTOR, based on its determination of what is required to meet the requirements of this Contract. The Contractor should provide appropriate service vehicles to support road calls and be able to make quick fixes to vehicles and onboard equipment to support service needs.
- b. **Spare Parts and Tires.** CONTRACTOR shall also be responsible for providing and maintaining (a) an adequate inventory of spare parts to assure proper maintenance and operation of Revenue Vehicles, taking into account the lead time required for shipping and other transportation and delivery requirements; and (b) tires in sufficient quantity for the Revenue Vehicles, in compliance with all requirements set forth in Section 306E hereof.

E. Vehicle Acquisition Plan.

- a. **CONTRACTOR Obligations.** CONTRACTOR shall operate and maintain all of the various types of Revenue Vehicles that are provided by the MCTD at the start of services under this Contract, or that are purchased by the MCTD during the Contract Term, in compliance with the intervals, specifications, and procedures in the manufacturers' operations and maintenance manuals. The full cost of such operation and maintenance is fully compensated for by the Fixed Monthly Fee and Service Hour Rate.
- b. **Substantial Deviations from Plan.** In the event of any substantial deviation from the Vehicle Acquisition Plan set forth in this Section, CONTRACTOR may request a re-negotiation of the then-applicable Fixed Monthly Fee and/or Service Hour Rate, in accordance with Section 305F hereof. As used in this subsection, the term "substantial deviation" means that (1) the actual timing of vehicle acquisition by the MCTD is twelve (18) months or longer than the timing set forth or assumed in the vehicle replacement plans of MCTD, or (2) more than twenty percent (20%) of the vehicles actually acquired by the MCTD are different in type, and have different maintenance requirements, than the vehicles presented in the RFP.

SEC. 302 OPERATING PERFORMANCE STANDARDS

- A. **Operation of Vehicles.** CONTRACTOR shall operate all MCTD-provided and CONTRACTOR-provided vehicles in accordance with all applicable local, State, and Federal laws and regulations with regard to safety, comfort, and convenience of passengers and the general public, emphasizing accident prevention strategies and techniques.

- B. **Service Characteristics.** CONTRACTOR shall provide all Revenue Service according to hours established by the MTCD. CONTRACTOR shall ensure that the direction, loading, departure, and general performance of vehicles are coordinated to ensure adherence to On-Time Performance standards.
- C. **Excessive Idling.** CONTRACTOR shall not leave a Revenue Vehicle running at a pickup location (unless passengers are already on board) or in the bus yard for more than fifteen (15) minutes (or for such other time period as the MTCD may establish in its discretion upon notice to the CONTRACTOR).

SEC. 303 SCHEDULES

- A. CONTRACTOR shall operate the MTCD's Fixed Route Services in accordance with the budgeted and approved Service Hours established by the MTCD.
- B. **On Going Review.** The MTCD shall evaluate schedules to address changes in ridership and demand, review feedback and assessments provided by CONTRACTOR, and review system parameters to reflect current operating conditions. All permanent schedule changes requested by the MTCD shall be implemented by the CONTRACTOR (following any necessary public hearings and MTCD action); provided that the MTCD, prior to directing any schedule change, shall give due consideration, pursuant to the service change process in Section 305 of this Contract, to the views of the CONTRACTOR regarding the feasibility and operating impact of such change. The MTCD shall have sole discretion to determine Service Hours, and to direct schedule changes pursuant to the service change process set forth in this Contract.
- C. **Holiday Schedules and Other Closures.** The MTCD reserves the right to require the CONTRACTOR to operate modified schedules on holidays as the MTCD deems appropriate. Notice of such modified schedules will be provided by the MTCD in writing.
 - a. Changes to such holiday schedules shall be in writing and delivered not less than two (2) weeks before the scheduled change.
 - b. The MTCD also reserves the right to require the CONTRACTOR to operate modified service schedules due to MTCD and/or Facilities closures even though such closures may not be pre-scheduled.

SEC. 304 ALLOWABLE SERVICE CHANGES

- A. **Description of Services Changes.**
 - a. **Authority of MCTD.** The MCTD may modify or adjust the services provided under this Contract at any time in accordance with the procedures in this Section. Service changes shall be set forth in a written notice from the MCTD, following any public hearing required and any necessary MCTD approval. The MCTD anticipates conducting service changes throughout the term of the Contract to make routing and scheduling modifications to existing Services or to add new services. Based upon the bi-annual review process described in Section 303B, the MCTD may implement additional service changes.
 - b. **Allowable Service Changes.** Allowable modifications and adjustments may include: extending, deleting from, or adding to Services service area and a corresponding revision of Services; temporarily increasing routes when the MCTD deems those routes

necessary to avoid or address a capacity constraint in violation of Section 37.131(f)(3) of the Code of Federal Regulations; reallocating, decreasing or increasing Revenue Hours or the frequency of service; or modifying requirements or scope relating to the maintenance of vehicles or Facilities (hereafter collectively referred to as "Service Changes"). Except as provided in subsection F of this Section, changes in Revenue Vehicle fleet mix do not constitute a Service Change for purposes of this Section.

B. Process for Service Changes.

- a. Proposed Changes. During the ongoing review process described in Section 303B, the MCTD and CONTRACTOR will evaluate ridership changes, changes in hours of service demand, passenger Trips Per Service Hour, capacity constraints and On-Time Performance to determine if a service change is appropriate. If the current level of service no longer attains the MCTD service standards, and if sufficient funding is identified, public review conducted (if necessary), and authority received by the MCTD Board of Directors (if necessary), MCTD shall request in writing that CONTRACTOR prepare for the provision of the service changes. The written request will outline elements to be followed such as any change in fixed monthly rate or Revenue Service Hourly Rate costs, vehicle deployment requirements, and other resources necessary to accommodate service change.
 - b. CONTRACTOR Response. CONTRACTOR shall, within twelve (12) Days after receipt of a request for a Service Change, provide the MCTD, in writing, with (a) a timeline for implementation of the Service Change; (b) an estimate of the cost or savings of the proposed change; (c) the anticipated impact of such change on existing operations, maintenance activities, schedules, routes, and existing capital equipment usage; (d) the necessity for any additional capital equipment to implement such change; and (e) the feasibility of such change. CONTRACTOR may also propose Service Changes, and may suggest alternatives or modifications to the Service Change criteria proposed by the MCTD.
 - c. Implementation. MCTD will review information provided by CONTRACTOR pursuant to paragraph (2), and may either (a) direct that CONTRACTOR proceed with the development and implementation timeline proposal for the Service Change as originally described; (b) direct that the proposed Service Change be implemented with modifications; or (c) notify CONTRACTOR the proposed Service Change will not be implemented. CONTRACTOR shall proceed to implement the proposed Service Change (with any modifications specified by the MCTD) in accordance with the schedule or timetable approved by the MCTD. Only those Service Changes directed or approved by the MCTD, in writing, shall be implemented by CONTRACTOR.
- C. Temporary Modifications.** Notwithstanding the preceding provisions of this Section, the MCTD may direct CONTRACTOR to make temporary modifications in the services provided or the schedules in order to address short term operating problems or issues.
- D. Other Service.** If the MCTD determines that other services should be added to its Services system, the MCTD reserves the right, in its sole discretion, to implement those other services through the Service Change process set forth in subsection B, or to separately procure and contract for those other services from an alternate provider.
- E. Special Services.** If the MCTD determines that Special Services are needed to meet a particular transit need within the scope of this Contract, the MCTD shall provide notice to CONTRACTOR of

the Special Services to be provided and the date on which the provision of such services shall commence. Given the very nature of Special Services, the MCTD may itself be provided limited advanced information and notice of requests. However, the MCTD will endeavor to provide CONTRACTOR with as much advance notice as feasible. CONTRACTOR shall be compensated for Special Services on the basis of the then applicable Service Hour Rate.

CONTRACTOR shall implement Special Services in accordance with the schedule established by the MCTD.

F. Possible Rate Adjustments.

- a. Categories. In the event of the following Service Changes, and no others, the CONTRACTOR may request a re-negotiation of the then-applicable Fixed Monthly Fee and/or Variable Service Hourly Rate:
 - i. If there is a cumulative increase or decrease in Service Hours of more than twenty percent (20%) over a Contract Year, of the Annual Service Hours set out for the Contract in Section 304.
 - ii. If there is a "substantial deviation" from the Vehicle Acquisition Plan as defined in Section 301E(b).
- b. Procedure. Any request for a rate change under this subsection shall be in writing and shall provide quantitative documentation that the Service Change in question has resulted, or will result, in additional costs to the Contractor in the operation or maintenance of Revenue Vehicles under this Contract. The MCTD is not obligated to agree to such a request, but will review, discuss, and consider any such request in good faith.

SEC. 306 VEHICLE MAINTENANCE

- A. **Vehicle Safety.** CONTRACTOR shall maintain all Revenue Vehicles and Support Vehicles in accordance with the manufacturers' specifications and standards and all local, State, and Federal requirements for safety and in accordance with the CONTRACTOR Vehicle Maintenance Plan in Attachment I.
- B. **Revenue Vehicle Maintenance.** CONTRACTOR shall complete, from bumper to bumper, all maintenance and repair of the Revenue Vehicles, including the routine replacement of components, within the Contract price, and in accordance with all manufacturers' specifications and standards, preventive maintenance manuals and Vehicle Maintenance Plan in Attachment H. CONTRACTOR shall use all OEM or OEM-approved equivalent components, parts and fluids. CONTRACTOR may not use any non-OEM equivalent products, components, or fluids without prior written approval of the MCTD and the OEM manufacturer.
 - a. Availability of Equipment. CONTRACTOR shall ensure that a minimum of eighty-five percent (85%) of all Revenue Vehicles are in operable condition and available for Revenue Service at all times. The total number of Revenue Vehicles out of service shall not exceed fifteen percent (15%) of the peak requirement for Services. All Revenue Vehicles shall, to the maximum extent feasible or as otherwise agreed, be used and maintained by classification on an equal and uniform basis so that miles are accrued evenly amongst vehicles initially placed into service during comparable periods, and maintenance activities shall be scheduled to assure that the maximum numbers of

Revenue Vehicles are available for Revenue Service during peak periods. CONTRACTOR shall ensure that an adequate supply of spare parts is available in order to maintain the Revenue Vehicles on a timely basis in accordance with this Section, taking into account the lead time required for shipping, customs clearance, and other transportation and delivery requirements.

- b. MCTD Inspection. The MCTD reserves the right, in its sole discretion at any time, and either directly or through a CONTRACTOR, to review CONTRACTOR's maintenance records and inspect and reject temporarily or permanently, by notice to CONTRACTOR, any vehicle CONTRACTOR proposes to use or subsequently utilizes which the MCTD deems unacceptable due to uncleanness, appearance, mechanical failure, or safety concerns.

- i. Pre-trip and Post-trip Inspections. CONTRACTOR shall ensure that all vehicle operators conduct a daily vehicle pre-trip inspection prior to being placed in service and a post-trip inspection at the end of service. Vehicle operators shall immediately report defects identified during the pre-trip inspection to a designated CONTRACTOR operations staff member. In addition, all defects reported on CONTRACTOR-provided pre-trip/post-trip inspection form shall be validated by CONTRACTOR maintenance staff.

The MCTD may, without prior notice, perform random inspections of the daily pre-trip/post-trip inspection forms, as well as monitor vehicle operators during their inspections. CONTRACTOR shall make necessary repairs, adjustments, or additions, at CONTRACTOR's sole expense, prior to placing any Revenue Vehicle in service. CONTRACTOR shall maintain inspection forms as required by Department of Transportation regulations and the California Highway Patrol and the MCTD may review such inspection forms during the Contract Term.

- c. Defects. Any defects noted by the vehicle operator inspector shall be noted on a pre-trip/post trip inspection form. Appropriate action shall be taken by CONTRACTOR to correct defective items noted in a defect report prior to the operation of the Revenue Vehicle.
- d. Records. A written record of all inspections and repairs shall be kept by CONTRACTOR. As requested, CONTRACTOR shall provide inspection and repair reports to the MCTD.
- e. Unsafe Vehicles. Revenue Vehicles shall not be operated with defects or other required repairs that make them unsafe to operate.
- f. Repair Standards. CONTRACTOR shall ensure that all repair work is performed by maintenance personnel who have demonstrated experience and documented training in the work to be done. Maintenance personnel shall have the necessary equipment and tools to perform any authorized work.
- g. Major Engine and Transmission Overhauls. When CONTRACTOR determines that a major engine or transmission overhaul is required, CONTRACTOR shall notify the MCTD. The MCTD may, in its discretion, retire the vehicle, have the overhaul performed by a third party, or direct CONTRACTOR to perform such work. If CONTRACTOR performs the work, the payment to CONTRACTOR will be for replacement engines or transmissions (as the case may be). CONTRACTOR shall use all OEM or OEM-approved components during routine maintenance and overhauls. CONTRACTOR may not use any non-OEM

equivalent products, components, or fluids without prior written approval of the MCTD and the OEM manufacturer. MCTD shall not pay for Major Engine and Transmission overhauls on CONTRACTOR owned vehicles.

- h. Preventive Maintenance Program. CONTRACTOR shall perform preventive maintenance in accordance with the intervals, specifications, and procedures set forth in the manufacturers' operations and maintenance manuals, including staffing, level of expertise, and reporting forms. Preventive maintenance should, to the maximum extent feasible, be conducted during off peak periods, and should be conducted in an expeditious manner to minimize the amount of time vehicles are out of Revenue Service. CONTRACTOR shall perform all required weekly, monthly, and yearly preventive maintenance as identified by OEM.
 - i. Graffiti. CONTRACTOR shall remove or cover graffiti as specified in CONTRACTOR's Vehicle Maintenance Plan.
 - j. Fueling. Revenue Vehicle fueling is to be performed in accordance with the Fueling provision found in Section 315.
 - k. Specific Maintenance Items. CONTRACTOR shall maintain the vehicle operators' First Aid kits, fire extinguishers and other required safety equipment.
 - l. Fire Suppression. CONTRACTOR shall perform an annual Fire Suppression and portable extinguisher PMI and certification on all Revenue Vehicles and shall be responsible for the annual charging of the fire suppression bottles on all Revenue Vehicles. CONTRACTOR shall follow all Federal, State and local guidelines in conducting these inspections, and shall use a certified technician to perform any inspections or repairs.
 - m. Electrical repairs. CONTRACTOR shall ensure that all electrical work is performed in accordance with the vehicle manufacturers' specifications and standards. Branching of wires, direct wiring, or circumventing safety systems by by-passing circuit protection devices is prohibited. When necessary to re-wire a particular system or systems differently than what is shown in the electrical schematic, CONTRACTOR must obtain prior approval from the OEM manufacturer.
 - n. Heating and Air Conditioning. CONTRACTOR shall perform an annual heating and air conditioning preventive maintenance inspection on all Revenue Vehicles.
 - o. Electronic Vehicle Maintenance Program. MCTD will be granted access to the CONTRACTOR's electronic vehicle maintenance program tracking system. If the CONTRACTOR does not have an electronic tool to track vehicle maintenance work, then MCTD will work with the CONTRACTOR to utilize TransTrack's Vehicle Maintenance module(s).
- C. **Warranties**. CONTRACTOR shall be responsible for managing all Revenue Vehicle-related warranty repairs.
- D. **Inventory**. CONTRACTOR shall maintain an adequate inventory of spare parts, supplies, tools, and other equipment to conduct maintenance and repairs on vehicles and other equipment in a timely manner in order to assure the capability of providing full Revenue Service at all times as required by this Contract.

E. **Tires.**

- a. CONTRACTOR Obligation. CONTRACTOR shall be responsible for providing tires for the performance of the Contract.
- b. **Tire Replacement**
 - i. CONTRACTOR is also responsible assuring that vehicles are equipped with safe and functional tires and that there is an adequate stock of tires on hand at all times, including at the end of the Contract Term. All replacement tires shall be properly sized and load-rated for vehicle weight and duty type, and only new (non-recap or grooved) tires may be utilized on the vehicle steering axle.
 - ii. At the completion or termination of the Contract, CONTRACTOR shall return all Revenue Vehicles with useable tires free and clear of any lien. Any tire lease entered into by CONTRACTOR shall not exceed the base Contract Term and the period of any option term exercised by the MCTD.
- c. Obligation to Recycle. CONTRACTOR shall be responsible for recycling all worn out and replaced tires.

- F. **California Highway Patrol (CHP) Terminal Inspection.** The CONTRACTOR will maintain a record of satisfactory California Highway Patrol (CHP) terminal inspections throughout the life of the contract. Upon completion of a CHP terminal inspection, the CONTRACTOR will immediately notify MCTD in writing as to whether the CONTRACTOR's facility received a satisfactory or unsatisfactory rating from the CHP; the CONTRACTOR will provide a copy of the CHP report to MCTD and indicate what action is being pursued if an unsatisfactory rating was received. These reports will be submitted to MCTD within 10 working days subsequent to the CHP inspection.

If the CONTRACTOR receives an unsatisfactory rating from the CHP, the CONTRACTOR will notify MCTD immediately and state what is being done to correct the deficiency. MCTD reserves the right to terminate the contract with cause with a 30-day notice if the CONTRACTOR receives an unsatisfactory rating from the CHP.

- G. **Condition Upon Return.** Upon termination of this Contract (for whatever reason), CONTRACTOR shall be responsible for ensuring, and shall warrant to the MCTD, that the Revenue Vehicles have been properly serviced and maintained, and are in good repair, in accordance with this Contract, and shall return such Vehicles to the MCTD in sound mechanical condition, Normal Wear and Tear excluded. The inspection process for this assessment is described in subsection G of this Section.

H. **Turnover Inspection and Audit Process.**

- a. General Requirements. CONTRACTOR shall be responsible for return of all Revenue Vehicles and Equipment to the MCTD in the condition in which CONTRACTOR received those Revenue Vehicles and Equipment (with the exception of Normal Wear and Tear) including body condition, system condition and function, all ancillary equipment (intact and functional), and overall vehicle operation and performance. This requirement extends to fare boxes and any other MCTD-provided equipment. No later than ninety (90) calendar days prior to the termination of this Contract, the MCTD, CONTRACTOR, and the new CONTRACTOR (if any) taking over operations and maintenance

responsibility for the MCTD, shall participate in the Revenue Vehicle and Equipment turnover inspection and audit process set forth in this subsection.

- b. Third Party Inspections. The detailed turnover inspection and audit will be performed by an independent third party, selected by the MCTD that is experienced in fixed route operations and maintenance and vehicle, facilities, and equipment inspections. The MCTD shall be responsible for the expenses of the audit. The third party inspector will conduct individual inspections on each Revenue Vehicle prior to the return of each Revenue Vehicle to the MCTD. Such inspections will be timed to ensure that any necessary repairs are completed and will require that CONTRACTOR conduct any needed repairs.
- c. Purpose. As the owner of certain assets, the MCTD is committed to protecting those assets and ensuring that the MCTD's contractors maintain the assets in good repair. This inspection process is one means used by the MCTD to so protect those assets. The purpose of the inspection and audit will be to establish the condition of the Revenue Vehicle fleet, the Facilities (if applicable) and the Equipment, as of the audit date, to determine if the Revenue Vehicles, Facilities, and Equipment have been maintained in accordance with the standards required under this Contract, and to determine the specific repairs and maintenance that needs to be performed, by Revenue Vehicle, Facility or Equipment item, in order to assure that all Revenue Vehicles, Facilities, and Equipment will meet the requirements set forth in this Section and the other Contract Documents.
- d. Process. Once the independent third party inspector has completed its inspection, the MCTD will release the results of the inspection report the outgoing CONTRACTOR and the MCTD's in-coming Services CONTRACTOR. CONTRACTOR shall be responsible for promptly completing all repairs and/or maintenance identified during the inspection and audit as necessary to meet such condition requirements by the Contract termination date, and shall also be responsible for the cost of all such repairs and maintenance.

Following the completion of repairs indicated on the initial inspection report, the MCTD may require the independent third party inspector to conduct an item-by-item re-inspection of the Revenue Vehicles and Equipment to verify whether satisfactory repair of the MCTD assets has been completed.

Any repair identified on a re-inspection report shall be addressed at CONTRACTOR's cost, subject to verification and sign off by the MCTD (or the MCTD's designee), on an item-by-item basis and, at the MCTD's sole discretion, may be performed by CONTRACTOR or another entity subject to the MCTD's approval. The process of inspection and re-inspection and repair of the Revenue Vehicles and Equipment shall continue until the date that the incoming contractor assumes responsibility for Revenue Service under a subsequent contract. Nothing in this Section shall be interpreted to relieve CONTRACTOR of its obligation to maintain the MCTD-provided assets during the transition period. Further, the cost of any repairs identified on a re-inspection report that are not completed by the initiation of Services under a contract immediately subsequent to this Contract shall be withheld by the MCTD from CONTRACTOR's final invoice under this Contract. The amount of the funds withheld will be sufficient to effectuate the identified repairs that have not been completed by CONTRACTOR to the MCTD's satisfaction.

- e. Final Day of Transition. During the twenty-four (24) hours prior to the Commencement Date of the new contract (as set out in the transition schedule established by the MCTD), the new contractor assuming responsibility for Revenue Service will conduct a final quick inspection of the Revenue Vehicle fleet and note any safety items or body damage. The MCTD, the outgoing CONTRACTOR and the incoming contractor shall also be on hand for that inspection to verify the incoming contractor's findings. The independent third party, selected by the MCTD may also be present at the final inspection and will facilitate the final turnover process. Any items identified in this final inspection in addition to items previously identified by the third party inspector may serve as a basis for the MCTD to withhold amounts from CONTRACTOR's final invoice in accordance.
- f. Disputes. If any dispute arises in the turnover inspection and audit process, the MCTD shall first attempt to facilitate the resolution of such dispute through meetings and conferences with CONTRACTOR and the new contractor. If the dispute remains unresolved for thirty (30) calendar days, the MCTD may invoke an expedited mandatory arbitration process, using an outside neutral arbitrator selected by the MCTD with the concurrence of CONTRACTOR and the new contractor, for a final and binding decision on all matters in dispute. In the absence of concurrence, the MCTD shall obtain a list of potential arbitrators from the American Arbitration Association, and shall select the neutral arbitrator from that list after consultation with the parties. Prior to binding arbitration, the MCTD shall require the parties to participate in a mediation process conducted by a neutral third party selected jointly by the parties. CONTRACTOR and the new contractor shall participate in the mandatory arbitration process and the mediation process. In addition, the MCTD may choose, in its discretion, to participate in the arbitration and mediation processes. During the disputes process, the MCTD may, in its discretion, direct CONTRACTOR to continue the process of repairing Revenue Vehicles, Facilities and Equipment. If appropriate, the arbitration may address cost allocation for repairs if that allocation is in dispute.
- g. Consent of Parties. By execution of this Contract, the MCTD and CONTRACTOR hereby consent to the mediation and arbitration process described in paragraph (6) and further agree to comply fully with any resulting arbitration decision, subject to any rights to contest such decision in accordance with applicable State law.
- h. Costs. The costs of any mediation or arbitration under this subsection shall be borne equally by CONTRACTOR and the new contractor.
- i. Documentation. If CONTRACTOR claims any Equipment as its property at the end of the Contract Term, it shall support that claim with invoices and other appropriate evidence of ownership.

SEC. 307 VEHICLES – CLEANING AND APPEARANCE

- A. **General Obligation**. CONTRACTOR shall be responsible for the appearance of all Revenue Vehicles and Support Vehicles and shall maintain the cleanliness of vehicles in accordance with the performance standards set forth in this Section and CONTRACTOR's Vehicle Maintenance Plan.
- B. **Standards**. CONTRACTOR shall clean and maintain all Revenue and Support Vehicles used by CONTRACTOR in carrying out services under this Contract in accordance with the following standards: Vehicle interiors shall be swept or vacuumed, gum shall be removed from the floors

and all passenger seats, windows shall be cleaned on the interior, and vehicles shall be mopped daily to remove all dirt and debris.

- a. Vehicles shall be cleaned using only fragrance free cleaning chemicals that are recommend by the OEM and that are not offensive or injurious to individuals with a heightened sensitivity to environmental toxins and fragrances.
- b. Vehicle exteriors and wheels shall be washed and scrubbed as needed, but no less than twice weekly.
- c. The complete undercarriage and engine of each Revenue Vehicle shall be steam cleaned as needed but no less than annually.
- d. All components of the vehicle body, appurtenances, and frame shall be sound and undamaged while in revenue service.
- e. All vehicles shall undergo insect extermination as necessary to eliminate the presence of insects. The extermination process shall be conducted while vehicles are out of service. CONTRACTOR is expressly prohibited from using any vermin control product or application for such a product that would be hazardous, when a vehicle is in operation, to the health and well-being of the passengers, service animals or the vehicle operator.
- f. Each Revenue Vehicle shall be fully detailed inside and out every one hundred-twenty (120) calendar days.
- g. All seat cushions that are tethered, faded, worn or torn shall be replaced.

SEC. 309 EQUIPMENT

- A. **MCTD Responsibility.** The MCTD shall provide CONTRACTOR with the Equipment necessary to support the operation and maintenance of Services under this Contract. The Equipment provided by the MCTD is listed in Attachment B.
- B. **CONTRACTOR Responsibilities.** CONTRACTOR shall provide all Equipment necessary to support the operation and maintenance of Contract services, with the exception of 1) any equipment and spare parts purchased with the existing MCTD-provided Revenue Vehicles; 2) capital equipment and spare parts purchased by MTCD for any new MCTD-purchased vehicles; 3) MCTD supplied MERA Radio equipment.

SEC. 310 VEHICLE AND EQUIPMENT INVENTORY

- A. **Initial Equipment Inventory.** The MCTD shall provide CONTRACTOR with an initial inventory and list of all Equipment to be provided. The existing Equipment owned or leased by the MCTD may be utilized only for the provision of Services by CONTRACTOR during the term of the Contract, without additional consideration to the MCTD.
- B. **Obligation to Return Equipment.** CONTRACTOR shall be responsible for returning to the MCTD, at the termination of this Contract Equipment that is of equivalent type, value (as of the date acquired), and condition as the Vehicles and Equipment identified in the initial inventory and Equipment list, Normal Wear and Tear excluded in accordance with the return of vehicles provisions found in Section 408.

- C. **Final Equipment Inventory.** The MCTD shall conduct a final inventory prior to the conclusion of the Contract Term. If any Equipment or other property is determined, on the basis of a comparison to the initial inventory, to be missing, damaged, otherwise unavailable for use, or in a condition that is in excess of Normal Wear and Tear, CONTRACTOR shall be responsible for either replacing such Equipment, tools, or other property, or compensating the MCTD for its replacement value. The MCTD may deduct any amounts due to the MCTD for the replacement of Equipment or property from the final monthly payment due to CONTRACTOR.
- D. **Sales of Surplus Property.** CONTRACTOR shall, in consultation with the MCTD, identify any MCTD Equipment or other property that it believes to be obsolete or no longer needed for Services. The MCTD may sell or otherwise dispose of such property in accordance with State and Federal law. The proceeds of any such sale shall be the property of the MCTD.

SEC. 311 FAREBOXES AND FAREBOX MAINTENANCE

- A. **MCTD Obligations.** The MCTD shall provide fareboxes and Clipper equipment to CONTRACTOR on all new vehicles. CONTRACTOR shall be responsible for farebox and Clipper maintenance. Farebox and Clipper maintenance shall include the ongoing maintenance of the equipment and any post-maintenance set-up. Such maintenance shall be performed in such a manner so as to cause minimal disruption in CONTRACTOR's operations. The MCTD shall also provide farebox keys to CONTRACTOR so it can perform on-road emergency services such as gaining access for clearing jammed fareboxes.

The Contractor will store spare farebox units, spare parts, diagnostic units, Clipper units and spare parts, and maintain an adequate inventory of card stock. Card stock must be stored in a temperature-controlled environment.

- B. **CONTRACTOR Obligations.** CONTRACTOR will ensure functionality, provide ongoing training to personnel on proper use of, provide ongoing maintenance, and OEM recommended preventative maintenance on the fareboxes (GFI) and Clipper units (Cubic). CONTRACTOR's vehicle operators shall record and maintain all data necessary for the satisfactory operation of the farebox and Clipper.
- C. **Farebox Key Controls.** The MCTD shall issue CONTRACTOR farebox keys to enable CONTRACTOR staff to access MCTD fare boxes. CONTRACTOR shall be responsible for adhering to the following procedures and requirements: (1) maintaining a written log of all personnel issued farebox keys, which shall be made available to MCTD upon request; (2) implementing safeguards to inspect key inventory quarterly; (3) collecting keys from personnel who are no-longer employed by CONTRACTOR; and (4) reporting in the log all keys acquired to replace lost, stolen, or otherwise unaccounted for keys. CONTRACTOR shall be responsible for the cost of replacing any lost or stolen keys it is issued, and shall be responsible for the cost of re-keying all fare boxes in the event that any key has been lost, stolen, or otherwise cannot be accounted for.
- D. **Clipper Revenue Data Responsibility.** The Contractor will ensure that all Clipper units are fully operational and responsible for Clipper data downloading and uploading from each bus at least every two days. The Contractor will be responsible for reviewing weekly recurring reports sent by Cubic to ensure that all Clipper units are working properly. If vehicles have uploaded data to the system within a week, contractor will be responsible for making special accommodation to either established communication using the vehicle or by swapping out the onboard equipment and docking to an active vehicle or test console to upload the data.

SEC. 312 INTELLIGENT TRANSPORTATION TECHNOLOGY

- A. **MCTD Obligations.** The MCTD shall provide Intelligent Transportation (IT) technology to CONTRACTOR on all new vehicles.
- B. **CONTRACTOR Obligations – AVL/AVAS System.** CONTRACTOR will ensure functionality, provide ongoing training to personnel on proper use of, provide ongoing maintenance, and OEM recommended preventative maintenance on the AVL (Syncromatics) system. The Contractor will monitor service via Syncromatics' Tracking/Live Dispatch modules and ensure that every operator is signed into the correct vehicle assignment before leaving the yard. CONTRACTOR will establish and maintain direct contact with Syncromatics for ongoing support. MCTD, at its discretion during the term of the Contract, reserves the right to establish a 3rd party maintenance agreement directly with the OEM for the AVL system.
- C. **CONTRACTOR Obligations - APC System.** CONTRACTOR will ensure functionality, provide ongoing training to personnel on proper use of, provide ongoing maintenance, and OEM recommended preventative maintenance on the APC (Syncromatics) system. The CONTRACTOR will, on a quarterly basis, recalibrate the APC sensors on all vehicles. CONTRACTOR will establish and maintain direct contact with OEM for ongoing support. MCTD, at its discretion, during the term of the Contract, reserves the right to establish a 3rd party ongoing maintenance agreement directly with the OEM for the APC system.
- D. **CONTRACTOR Obligations Mobile Digital Video Surveillance.** CONTRACTOR will ensure functionality, provide ongoing training to personnel on proper use of, provide ongoing maintenance, and OEM recommended preventative maintenance on the (Seon) Mobile Video Surveillance system. CONTRACTOR will establish and maintain direct contact with OEM for ongoing support needs. MCTD reserves the right to establish a 3rd party ongoing maintenance agreement directly with the OEM.

The onboard camera systems record audio and video for an average of up to a month depending on hours of actual bus operation. The Contractor will be responsible for retrieving requested data on occasion and conducting preventive maintenance activities during PM cycles.

Marin Transit is exploring integrating their onboard camera system with WiFi during the term of this contract. Marin Transit will work with the Contractor to coordinate equipment installations and provide training support to maintain any associated equipment with the Camera-WiFi integration.

- E. CONTRACTOR shall house networking equipment, provide necessary server rack space and cooling for the IT technology, and have sufficient internet data communications to support a minimum access to Marin Transit's web based data management system. CONTRACTOR shall provide all desktop computers to be used by dispatchers, supervisors, and data clerks to interact with TransTrack, Clipper, and GFI. CONTRACTOR is required to use any IT software package or hardware as directed by MCTD and for coordinating with MCTD on the proper staff training for use of said software/hardware.

SEC. 313 FARE STRUCTURE

- A. **MCTD and CONTRACTOR Responsibilities.** The MCTD shall determine the fare rate and fare structure for Services. The MCTD reserves the right, in its discretion, to implement any fare adjustments deemed appropriate, subject to any required public hearing process. CONTRACTOR shall be responsible for implementing and complying with the MCTD's fare policy and structure.
- B. **Methods of Payment.** CONTRACTOR shall accept all means of payment and onboard MCTD pass sales approved from time to time by the MCTD, including, but not limited to, cash, passes, tickets, Clipper cards, and other electronic transit fare media. All methods of payment by

passengers shall be recorded by each vehicle operator. The MCTD shall notify CONTRACTOR of all acceptable methods of payment. CONTRACTOR shall not accept methods of payment that have expired or are otherwise invalid, and shall compensate the MCTD for an inappropriate method of payment accepted. CONTRACTOR shall insure that passengers are required to show proper identification.

SEC. 314 FARE COLLECTION

A. CONTRACTOR Obligations.

- a. Fare Recording. CONTRACTOR's vehicle operators shall receive all fare payment into the MCTD supplied farebox or Clipper equipment and must verify that each passenger by boarding type (youth, senior, transfer, etc.) is accounted for. CONTRACTOR shall maintain the operation of the farebox and Clipper equipment to the satisfaction of the MCTD. Failure to pay a fare is considered a violation of MCTD policy and shall be reported by the vehicle operator.
- b. Revenue Collection and Deposit. CONTRACTOR will use the MCTD provided audit unit to receive and store farebox revenue. The Contractor will be responsible for emptying the vault weekly into a locking bag or other tamper-proof container (provided by MCTD) and taking the cash bag directly to the San Rafael Bank of Marin branch to be deposited into the MCTD designated account. The Bank of Marin is located at 999 Andersen Drive, Suite 190 in San Rafael. Revenue is to be counted by the bank. If Marin Transit finds a revenue discrepancy, the CONTRACTOR will be responsible for assisting in identifying and addressing the issue related to the source of the discrepancy.

- B. **Changes.** The MCTD may make changes to the fare collection and recording process. CONTRACTOR shall cooperate in implementing any such changes and shall implement appropriate procedures consistent with all such changes.

SEC. 315 FUEL

- A. **CONTRACTOR Obligation.** The MCTD will provide CONTRACTOR with access to the fueling facilities at the Marin County Civic Center Fleet facility. CONTRACTOR is responsible for managing fuel cards and working within the County of Marin fueling guidelines with respect to fueling times and access to fuel islands. Contractor may choose to fuel vehicles on-site at their facility or off-site at a commercial facility.

In the event that CONTRACTOR chooses to fuel at locations other than the Marin County Civic Center and MCTD has approved the CONTRACTOR's Vehicle Fueling Plan to do so, the CONTRACTOR be paid directly by Marin Transit.

- B. **Usage and Reporting.** CONTRACTOR shall be responsible for verifying fuel deliveries and usage to adequately measure amounts of fuel received and dispensed and reported to MCTD. If CONTRACTOR fuels at locations other than the Marin County Civic Center, they shall submit delivery slips or invoices as proof of usage, per approval by MCTD, when seeking fuel reimbursement. CONTRACTOR shall also provide daily fueling records including mileage and fuel dispensed in TransTrack or another format designated by MCTD.

SEC. 316 SAFETY, SECURITY, AND EMERGENCY MANAGEMENT PROGRAM

- A. **CONTRACTOR Obligations.** CONTRACTOR shall be responsible for the safety and security of the passengers and the Vehicles, Systems, and Equipment provided by the MCTD for the

CONTRACTOR's use, and for providing a safe workplace for its employees in the performance of Vehicle and Equipment maintenance responsibilities. CONTRACTOR shall work cooperatively with MTCD staff, other contractors, and local, State and Federal representatives in developing and implementing safety and security procedures. CONTRACTOR shall provide MCTD with a copy of its Safety, Security, and Emergency Management Program (to be made part of this document as Attachment J). CONTRACTOR's Safety, Security, and Emergency Management Program will be complementary to any MTCD Emergency Response, Safety and Communications Plans.

B. Emergency Preparedness Plan

MCTD will work with the Contractor to develop, implement, and maintain an Emergency Preparedness Plan. The Emergency Preparedness Plan will be updated as necessary and submitted to Marin Transit on an annual basis. See Section 508 in this contract. The Plan, at a minimum, shall address prioritizing requests for service during an emergency, Intra-agency and interagency communication and backup capabilities, staffing plan including essential personnel and staffing capable of multiple roles, a vehicle inventory, documentation procedures, communication protocols, and after-action evaluation. Contractor shall provide Marin Transit with a copy of its Emergency Preparedness Plan to be made part of this document as Attachment M.

C. CONTRACTOR Personnel.

- a. Responsible Staff. CONTRACTOR, as part of its Management Plan, shall designate its operations and safety/training managers to direct the CONTRACTOR's safety, system security and emergency preparedness programs. This staff person shall have sufficient training and experience to assist the MTCD in the coordination of emergency preparedness activities. The designated managers will complete the following National Incident Management System (NIMS) training courses within the first three months of the contract: IS-700-National Incident Management System, An Introduction and ICS100 – Introduction to the Incident Command System. Both courses are available through an interactive web-based program. Information on NIMS training is available at:
https://www.fema.gov/pdf/emergency/nims/nims_training_program.pdf

MCTD will work with CONTRACTOR to identify appropriate emergency management training for staff and certification programs for designated managers.

- b. Attendance at Meetings. CONTRACTOR shall require its operations manager to participate, on behalf of CONTRACTOR, in regular meetings and special meetings with the MCTD as requested.
- c. Activities. CONTRACTOR shall be required to participate in activities in support of the MTCD's efforts to meet and prepare for emergencies. As directed by MCTD staff, CONTRACTOR's operations manager shall participate in select exercises and training opportunities under the Marin County Emergency Operations Center. CONTRACTOR's managers assigned to system security and emergency preparedness shall coordinate these events with the designated MCTD staff and additional CONTRACTOR staff if required, and shall arrange for the use of appropriate MCTD assets if needed.
- d. Training. CONTRACTOR shall ensure that training of all Managers, Supervisors and Front Line employees follows Federal, local, state recommendations, and includes:

- i. Training in emergency and incident response and personal security training (e.g., Drug Free Work Place Initiatives, Amber Alert and Community Safe House Programs, Employee Assistance Programs, and Workplace Violence Prevention and Awareness Programs); and
 - ii. Safety/OSHA related training (e.g., first aid, personal protective equipment, etc.).
- e. CONTRACTOR shall conduct refresher and/or re-training on an annual basis. CONTRACTOR shall maintain documentation of training and shall provide it to the MTCD upon request.

D. Emergencies.

- a. Response by CONTRACTOR. Upon verbal or written authorization from the MCTD Project Manager, CONTRACTOR shall respond to emergency situations within Marin County with CONTRACTOR personnel and MCTD-owned vehicles. In the event of a major emergency or natural disaster, such as a fire, flood, or man-made catastrophe, CONTRACTOR shall make labor, management, transportation, and communications resources available to the extent feasible for emergency assistance. Contractor will deploy vehicles as directed by MCTD or the Marin County Emergency Operations Center.
- b. Record keeping. MCTD will be obligated to compensate CONTRACTOR for emergency service that significantly exceeds the normal expense of operating the service. MCTD will provide CONTRACTOR with systems to document costs for paratransit staff hours, vehicle operating hours, and miles over and above the baseline cost of maintaining normal service.
- c. Safety. CONTRACTOR shall be responsible for the safety of its personnel and for any worker's compensation claims that might result from performance of emergency service.

E. Audits. CONTRACTOR shall conduct a self-audit on safety, security, and emergency preparedness on an annual basis. CONTRACTOR shall also participate in periodic MTCD audits and monitoring. These audits/monitoring will be based upon Federal; State, and local programs and guidelines, audit results, and MTCD-established policies and procedures. The MTCD may conduct site visits of the Facilities at any time during the Contract Term for purposes of audits and monitoring. CONTRACTOR shall make available any and all records, files, logs and associated documentation to the MTCD's designated representatives as requested. CONTRACTOR shall also assist the MTCD during any local, State, or Federal safety or security audits.

F. Reporting. CONTRACTOR shall be responsible for regular reporting of information to the MTCD relating to system safety and security. The following is a reference list of required reports and the timing of the report.

- a. Monthly.
 - i. Security and Emergency Incident Report.
 - ii. NTD Safety and Security Report.
 - iii. Training sessions completed related to system safety and emergency. (Training should be classified as either CONTRACTOR-required or a Federal or State requirement.)

- b. Quarterly. Safety meeting agenda and minutes, including corrective actions taken as a result of items identified through the safety committee.
- c. Semi-Annually.
 - i. OSHA Hazard Analysis.
- d. Annually.
 - i. Results of annual self-audit.
 - ii. Year End Trend Analysis, to be included in Monthly Safety/Security incident Trend Analysis.

As other reports are required by local, State or Federal agencies, the CONTRACTOR will be notified of its responsibility to provide those reports and information.

- G. **Workplace Safety.** CONTRACTOR shall provide a safe workplace and safe working environment for all staff and all operations/maintenance activities, in accordance with required Federal, State, and local requirements. CONTRACTOR shall exercise reasonable care in discovering and preventing violations and in correcting identified hazards.

SEC. 317 ADVERTISING

- A. **MCTD Rights and Responsibilities.** The MCTD shall be responsible for marketing, public relations, and advertising services, and its decisions on all such matters shall be final. The MCTD shall establish the terms and conditions of any interior or exterior advertising, including the selection of advertising contractors. Proceeds of any advertisement shall be the sole property of the MCTD.
- B. **CONTRACTOR Obligations.**
 - a. Cooperation. CONTRACTOR shall cooperate with the MCTD in the implementation of the MCTD's marketing and advertising activities.
 - b. Rider Alerts. CONTRACTOR shall be responsible for posting, or otherwise making available on board, passenger information provided by the MCTD.
 - c. Facilitation. CONTRACTOR shall make requested vehicles available at the assigned maintenance facilities for installation, repair and maintenance of advertising, upon a minimum of twenty-four (24) hour notice, unless it notifies the MCTD in advance that it cannot comply due to operational requirements. CONTRACTOR shall permit access to any Revenue Vehicles available in the yard for advertising activities so long as it does not impact service requirements.

SEC. 318 COOPERATION WITH OTHER CONTRACTORS.

CONTRACTOR acknowledges that one or more other contractors of the MCTD have certain responsibilities regarding the provision of transit or paratransit services in Marin County. CONTRACTOR agrees to cooperate and coordinate fully with such other contractors when appropriate, and further agrees not to interfere with such other contractors in the performance of their respective duties.

ARTICLE 4—COMPENSATION AND COMMERCIAL TERMS

SEC. 401 COMPENSATION TO CONTRACTOR

- A. **Basis for Compensation.** All compensation to the CONTRACTOR for services under this Contract shall be in accordance with the Fixed Monthly Fee and the Revenue Hour Rate for each year of the Base Contract Term and for each option year, as set forth in Attachment A to this Contract.
- B. **Compensation for Fixed and Variable Costs.** CONTRACTOR's fixed costs shall be compensated monthly on the basis of a Fixed Monthly Fee in accordance with Attachment A. CONTRACTOR's variable costs for the operation of services and maintenance of the Revenue and Support Vehicles and Equipment, and associated services provided under this Contract, shall be compensated monthly on the basis of a Revenue Hour Rate in accordance with Attachment A.
- C. **Monthly Amount Payable.** The amount due to the CONTRACTOR each month for its services under this Contract will equal the sum of (1) the Fixed Monthly Fee; plus (2) the number of Revenue Hours actually operated in that month, multiplied by the applicable Revenue Hour Rate. Any Special Services provided by the CONTRACTOR shall be compensated using the Revenue Hour Rate in effect at the time those services are provided. CONTRACTOR shall not invoice the MTCD for work not performed.
- D. **Scope of Compensation.**
 - a. Inclusion in Rates. Except as provided in paragraph (2) of this subsection, the compensation provided to the CONTRACTOR as described in this Section shall cover all costs of services provided and Work performed under this Contract, including (a) all costs of operating, maintaining, and repairing the Revenue Vehicles and replacing vehicle components and parts as necessary; (b) all costs of operating and maintaining and repairing the Support Vehicles (whether supplied by the MTCD or the Contractor) and replacing vehicle components and parts as necessary; (c) all costs of maintaining and repairing the Equipment provided by the MTCD; (d) the costs of purchasing or otherwise obtaining any Equipment, materials, and supplies (including spare parts and tires) necessary for the performance of services (other than Equipment provided by the MTCD); (e) all costs of training; (f) all costs associated with the implementation of the CONTRACTOR'S required plans and programs; (g) the cost of repairs and parts for vehicle accident damage; (h) all costs associated with the administration and enforcement of warranties; (j) all costs associated with the removal of hazardous materials; and (k) all costs of preparing vehicles for donation, disposal or removal from Revenue Service.
 - b. Exclusion from Rates. CONTRACTOR shall not be responsible for (a) fuel costs of the Revenue Vehicles used in providing services under this Contract; and (b) engine and transmission overhauls as provided in Section 306B(h).
- E. **Fixed Price Obligations.** CONTRACTOR'S Fixed Monthly Fee and Revenue Hour Rates set forth in Attachment A are firm fixed price amounts that are not subject to increase during the Base Contract Term or the option years. CONTRACTOR acknowledges and agrees that it assumes the risk of increases in the cost of doing business over the Base Contract Term and the option years, subject to any rate adjustments it may seek pursuant to Section 305F. However, in the event of an unanticipated and exceptional change in applicable law or regulations after the date of execution of this Contract that directly results in additional costs of providing operations and maintenance services hereunder, the CONTRACTOR may request that the MTCD allow an adjustment in its Fixed Monthly Fee or Service Hour Rate. The MTCD is not obligated to agree to such a request, but will review, discuss, and consider any such request in good faith.

- F. **Price Summary.** CONTRACTOR'S Fixed Monthly Payment and Revenue Hour Rates are based upon the CONTRACTOR'S Detailed Base Year and Option Year Price Forms, which shall be utilized as provided in subsection G hereof.
- G. **Total Cost Summary Information.** The Contractor's Detailed Base Year and Option Year Price Forms information may be used by the MCTD and the Contractor for the following purposes: (a) determination of disputes over costs or invoices; (b) determination of costs associated with change orders, service changes, or Contract amendments; (c) resolution of claims; (d) audits by the MCTD or other Federal or State agencies with audit authority; and (e) other Contract oversight purposes determined appropriate by the MCTD in its discretion.

SEC. 402 INVOICES

- A. **In General.** During the term of the Contract, CONTRACTOR shall submit monthly invoices to the MCTD's Accounts Payable office, in the format prescribed by the MCTD, with appropriate documentation in accordance with this Section.
- B. **Billing Process.**
 - a. Invoice. CONTRACTOR shall submit an invoice to the MCTD for each month of service by the 10th of the following month. The monthly invoice shall (a) set forth the applicable Fixed Monthly Fee and Revenue Hour Rate; (b) specify the number of Revenue Hours operated in the month; (c) attach the monthly TransTrack report showing the specified number of Revenue Hours operated; and (d) calculate the total amount due.
 - b. Net Amount Payable. The net amount payable to the CONTRACTOR for a month will be the total amount due under paragraph (B)(a), less the sum of: (a) any fares collected as required by Section 313; (b) any liquidated damages assessed by the MCTD for that month under Section 403 hereof; (c) any fuel charges incurred by the MCTD related to operation of CONTRACTOR's other operations.
 - c. Payment. Subject to subsection C hereof, the MCTD shall make payment within thirty (30) calendar days after each invoice is received and approved.
 - d. Reservation of Rights. The MCTD reserves the right to obtain from the CONTRACTOR any information needed to support any charges included in an invoice.
- C. **MCTD Review.** If the MCTD determines, based on its review of an invoice, that payment has been requested for services that were not provided in accordance with this Contract or that failed to meet service specifications, or if the MCTD otherwise questions or objects to the contents of an invoice, MCTD shall so notify CONTRACTOR and give CONTRACTOR the opportunity to correct the invoice or provide further necessary documentation or explanation within ten (10) calendar days. If such correction or documentation is not provided to the satisfaction of the MCTD within the identified time, the MCTD will withhold payment of the disputed amount and make payment of any undisputed amount due.
- D. **Audits and Statements.**
 - a. Annual Statement. CONTRACTOR shall have prepared, within ninety (90) calendar days after each anniversary date of this Contract, an annual financial statement of its revenues and expenses. MCTD reserves the right to audit CONTRACTOR's annual statements.

- b. Discretionary Audits. In addition to any audits of CONTRACTOR's financial statements performed under paragraph (a.), the MCTD reserves the right to conduct, at any time, an audit of any records of CONTRACTOR that are related directly or indirectly to the services provided under this Contract. The cost of any discretionary audit will be paid by the MCTD.
- c. Adjustments. Any overpayment or underpayment uncovered in any audit under paragraph (a) or (b) may be charged or credited (as the case may be) against future amounts otherwise due to CONTRACTOR. Appropriate financial adjustments to future payments shall be made by the MCTD based upon any inconsistency, irregularity, discrepancy, under-billing, or unsubstantiated billing revealed as a result of any audit.
- d. Notice to CONTRACTOR. Prior to withholding payment or deducting amounts from future invoices, the MCTD will give notice to CONTRACTOR and provide CONTRACTOR with an opportunity to state its position on the issue presented. Any dispute that cannot be resolved by CONTRACTOR and the MCTD is subject to resolution under Section 509.

E. **Address for Invoices.** Invoices for payment shall forwarded to:

Accounts Payable
 Marin Transit
 711 Grand Avenue #110
 San Rafael CA 94901

Invoices shall be accompanied by any reports required by Section 501 of this Contract.

- F. **Final Month Invoice.** The MCTD may, in its discretion, withhold all or any portion of the amounts due for the final month of service by CONTRACTOR, pending the resolution of any disputes, the successful completion of all transition requirements under Section 507, and the completion of the turnover audit process (including the performance of any necessary maintenance and repairs) under Section 306G hereof.

SEC. 403 LIQUIDATED DAMAGES

A. **Notification and Imposition of Liquidated Damages.**

- a. **Notification Steps.** The MCTD intends to provide notice to CONTRACTOR for the first occurrence that can be the basis of the assessment of liquidated damages under subsection C of this Section. Upon the occurrence of the second violation at any time during the Contract term, the MCTD intends to provide written notice to CONTRACTOR as a warning that liquidated damages will be assessed on the occurrence of another violation. A third violation shall be the basis of the imposition of the liquidated damages at issue. Notwithstanding the preceding sentence: (a) the MCTD may, in its discretion, impose liquidated damages for any violation without following the three-step process described above; and (b) such three-step process shall not apply to vehicle maintenance liquidated damages under subsections C (3) and (4).
- b. **Multiple Assessments.** The MCTD does not intend to impose multiple liquidated damages under this Section for the same incident, occurrence, or other event, but retains the discretion to do so in appropriate circumstances.

- c. **Moratorium.** The MCTD shall not impose liquidated damages under this Section for the first ninety (90) days of the first year of the Base Contract Term, except for any liquidated damages that relate to violations of safety requirements.

B. Deduction and Assessment of Liquidated Damages.

a. **Assessment by MCTD.**

- i. **Basis of Assessment.** The liquidated damages set forth in subsection A shall be calculated, assessed, and reported by the MCTD to CONTRACTOR on a monthly basis, in accordance with subparagraph (b) hereof. Liquidated damages shall be assessed on the basis of the information provided in CONTRACTOR's invoices, reports, and other documentation as required under this Contract, as well as through the various reporting mechanisms available to the MCTD, including Communications System reports, visual observations, inspections, ride checks, data surveys, passenger comments, and such other means the MCTD may utilize.
- ii. **Notice.** The MCTD will provide CONTRACTOR with a listing of liquidated damages assessed each month, itemized by category and dollar amount. The MCTD will establish appropriate forms for such notification and assessment.

b. **Response by CONTRACTOR.**

- i. CONTRACTOR shall respond to the MCTD in writing within five (5) days of receipt of the notice of assessment of liquidated damages. CONTRACTOR shall have an opportunity to demonstrate to the MCTD that it made all reasonable efforts to comply with its contractual obligations and that its failure to comply was due to circumstances beyond the control of CONTRACTOR, or any person for whom CONTRACTOR is legally or contractually responsible, as consistent with the Force Majeure definition set out in Section 410D. The circumstances beyond CONTRACTOR's control do not include delays which may reasonably be anticipated on a daily basis on any given roadway or in any given area.
 - ii. On the basis of CONTRACTOR's demonstration under subparagraph (a), the MCTD reserves the right to reduce or waive the liquidated damages at issue. In the absence of a sufficient demonstration from CONTRACTOR, all amounts of liquidated damages imposed under this Section shall be deducted by the MCTD from CONTRACTOR's next monthly invoice.
- c. **Agreement of CONTRACTOR.** CONTRACTOR understands and agrees that if it fails to meet the schedule, maintenance, and other performance requirements of this Contract, the MCTD will suffer damages which cannot be quantified as of the date of execution of this Contract. CONTRACTOR hereby agrees to have deducted from its invoices, or to pay directly upon request, the liquidated damages amounts stated in this Section. CONTRACTOR further agrees that amounts payable under this Section are in the nature of liquidated damages and are not a penalty, and that such amounts are reasonable in light of the actual or anticipated harm incurred and the difficulties of proof of actual loss.

- C. **Categories of Liquidated Damages.** The following liquidated damages shall be assessed by the MCTD on CONTRACTOR for each failure to perform as described below.

Operating Liquidated Damages

Description of Violation	Penalty
1) Early Trips	\$500 per occurrence
2) Late Pull Outs (>10 minutes)	\$75 per occurrence
3) Missed Trips (>20 minutes)	(cost of trip + \$200)
4) More than 5 Verified Complaints per Month	\$75 per additional complaint
5) Failure to Submit Reports	\$75 per report
6) Falsification of Reports	\$1,000
7) Failure to Input Data into TransTrack	\$100 per occurrence
8) Heating or Air Conditioning Failure in Service	\$75
9) Unsafe Operation of Vehicle	\$100
10) Misuse of Marin Transit Vehicle	\$1,000
11) Use of Cell Phone during Vehicle Operation	\$1,000
12) Operator Discourtesy	\$75
13) Operator not Wearing Seatbelt during Vehicle Operation	\$100
14) Operators not Adequately Trained or Failing to Properly Operate Fareboxes or Destination signs.	\$100
15) Schedules or Complaint Cards Not Available on Vehicles	\$75
16) Rider Alerts/ Posters not Posted on Vehicles	\$75
17) Radio Communication Not Maintained	\$100 per occurrence after two warnings
18) ADA Related Operator Error, e.g., Failure to Announce Stops, Failure to properly secure wheelchair.	\$75
19) Failure to Complete Operator Daily Pre-and Post-Trip Inspection	\$100
20) Negligence of CONTRACTOR Staff Resulting in Serious Injury to Passengers	\$500

Maintenance Liquidated Damages

Description of Violation	Penalty
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1) Failure to Complete Scheduled Inspection/Oil Change/Lube Intervals/Engine Tune-Ups	\$75
2) Failure to Maintain Clean Vehicles	\$100/day
3) Failure to Complete Preventive Maintenance of Air Conditioning	\$75
4) Insufficient Inventory of Spare Parts	\$150 per day bus out of service
5) Failure to Make Timely Repairs of Accident Damage	\$150
6) Failure to Make Timely Repairs of AVL, MDT, APC, or Camera systems	\$150 per occurrence
7) Not Maintaining Clear Vehicle Maintenance Records	\$500
8) Not Providing Maintenance Reports to Marin Transit	\$75
9) Failing an Inspection by California Highway Patrol (CHP)	\$750
10) Safety Violations in Maintenance Yard or Vehicle Condition	\$500
11) Failure to Keep Wheelchair Lifts in Proper Working Condition	\$750
12) Failure to Remove Graffiti from Vehicles in a Timely Manner	\$750
13) Failure to Keep Glass and Windows in Proper Condition	\$100
14) Failure to Make Timely Repairs of Fareboxes or Clipper Units	\$500

- D. **Reservation of Rights.** Neither the agreement of the MCTD to accept liquidated damages as compensation for its damages for CONTRACTOR's failure to perform, nor the imposition or assessment of any liquidated damages under this Section, shall affect any other rights and remedies of the MCTD under this Contract, including the right of the MCTD to terminate this Contract in accordance with the termination provisions hereof. In addition, in the event of a pattern of repeated failures by CONTRACTOR in any of the liquidated damages categories in subsection C, the MCTD may in its discretion double or triple the stated liquidated damage amount.

SEC. 404 RISK OF LOSS OR DAMAGE

CONTRACTOR shall be responsible for the Revenue and Support Vehicles, Equipment, tires, supplies, and Facilities, whether owned by CONTRACTOR or the MCTD, used in the performance of the services under the Contract, and shall also be responsible for all losses or damages (whether or not the fault of CONTRACTOR) with respect to any such vehicles, equipment, tires, or supplies, subject to Normal Wear and Tear. In the event of damage to or loss of a Revenue Vehicle due to an accident, CONTRACTOR shall be responsible for replacement costs of the vehicle at the depreciated value of said vehicle at the time of loss.

SEC. 405 INSURANCE

- A. **Required Insurance.** CONTRACTOR shall carry and pay premiums for insurance of the types and with the limits of liability set forth in this subsection. Such insurance shall be maintained in effect at all times during the term of the Contract and shall cover all events occurring or arising during the term of the Contract (commonly known as tail coverage). The insurance required is as follows:
- Workers' Compensation Insurance, including Employers' Liability, with limits of not less than \$1,000,000, covering all of CONTRACTOR's employees engaged in work under the Contract as required under the Workers' Compensation Act of the State of California.
 - General Liability Insurance covering the occupied and utilized Facilities provided by the MCTD, other premises used for storage and maintenance of vehicles used in performance of

the Contract, and bus stops, with limits of liability of not less than \$2,000,000 each occurrence combined single limit and \$10,000,000 general policy aggregate if applicable. Such liability insurance shall also include coverage for Personal Injury Liability, Contractual Liability, and Liability for Independent CONTRACTOR.

- c. Automobile Liability Insurance covering all Revenue Vehicles and Support Vehicles used in connection with the work performed under the Contract, with limits of not less than \$10,000,000 each occurrence combined single limit for bodily injury and property damage.
 - d. Automobile Physical Damage Insurance on all MCTD-owned Revenue Vehicles covering collision and fire, theft, combined additional coverage with limits of liability not less than the actual cash value of the vehicle at time of loss or the cost to repair or replace with like kind and quality with deduction for depreciation. Deductibles shall not exceed \$50,000 for each loss, and MCTD shall be named Loss Payee under the policy. CONTRACTOR shall be responsible for payment of any loss under the deductible amount.
- B. **MCTD Coverage.** The MCTD (and its Governing Body, officers, employees and agents) shall be named as an additional insured via additional insured endorsement for all commercial coverage for all MCTD-owned or leased assets and for all liability coverage.
- C. **Notice.** All insurance policies required in this Section shall be endorsed to provide a sixty (60) calendar day written notice of cancellation, renewal, or material change to the MCTD.
- D. **Umbrella Policy.** The limits of liability as required under this Section may be provided by a single policy of insurance or a combination of policies including a so-called umbrella liability policy, subject to prior approval of the MCTD; provided that such umbrella policy provides all of the coverages required under subsection A.
- E. **Self-Insurance.** Self-insurance programs are subject to prior approval by the MCTD upon review of CONTRACTOR's financial capacity to provide such self-insurance. Any self-insurance program utilized by a CONTRACTOR must provide the MCTD with at least the same coverage, limits of liability, and protection as would be afforded by first dollar insurance meeting the requirements of this Section.
- F. **Minimum Insurance Requirements.** The types of insurance and limits of liability stated in this Section are the minimum acceptable to the MCTD and shall in no way be construed as a limitation of CONTRACTOR's liabilities and obligations arising out of the performance of the Contract.
- G. **Subcontractors.** CONTRACTOR shall require all subcontractors performing work under the Contract to carry insurance to the types and with limits of liability as CONTRACTOR shall deem appropriate and adequate. CONTRACTOR shall obtain and make available for inspection by the MCTD upon request Certificates of Insurance evidencing insurance coverages carried by such subcontractors.
- H. **MCTD Approval.** All insurance required to be maintained or provided by CONTRACTOR and subcontractors shall be with companies and through policies approved by the MCTD. All such Insurance Companies shall carry a Best's rating of A- or better Class VII and be licensed by the State of California. The MCTD has the right to inspect in person, prior to commencement of the work, all of CONTRACTOR's insurance policies in regard to required insurance coverages.

- I. **Certified Copies of Policies.** Proof that required insurance coverage exists shall be furnished to the MCTD in the form of certified copies of insurance policies within seven (7) Days after receipt of notice of Contract award. Renewal or replacement policies shall be furnished five (5) Days prior to the expiration date or termination date of any policy furnished in compliance with the requirements of the Contract.
- J. **MCTD Purchase of Insurance.** If at any time during the Contract term CONTRACTOR fails to provide the insurance required above, the MCTD reserves the right, but not the obligation, to purchase other insurance to protect the MCTD's interests, and to charge CONTRACTOR, or withhold from CONTRACTOR's payments, the full cost of such insurance, plus a five percent (5%) fee.

SEC. 406 INDEMNIFICATION

- A. **General Requirement.** CONTRACTOR agrees to protect, defend, indemnify and hold the MCTD, its Governing Body, officers, employees and agents, free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character (hereinafter collectively "claims") in connection with or arising directly or indirectly out of the Contract or the performance hereof by CONTRACTOR, any subcontractor of CONTRACTOR, or any person for whom CONTRACTOR is legally or contractually responsible, whether or not it is alleged or determined that the action on which the claim was based was caused by the negligence or willful misconduct of CONTRACTOR, any subcontractor, or any other person for whom CONTRACTOR is legally or contractually responsible. Without limiting the generality of the foregoing, any and all such claims, relating to personal injury, any tangible or intangible property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. CONTRACTOR further agrees to investigate, handle, respond to, provide defense for and defend any such claims, at its sole expense and agrees to bear all other costs and expenses related thereto, whether or not it is alleged or determined that CONTRACTOR was negligent, and without regard to whether such claim is groundless, false, or fraudulent.
- B. **Handling of Claims.** The MCTD agrees that it will notify CONTRACTOR in writing within ten (10) Days of receipt or notice of any claim described in subsection A; provided that the failure of the MCTD to so notify CONTRACTOR shall not relieve CONTRACTOR of any of its obligations under this Section. CONTRACTOR shall have the right to assume the defense of all claims that might be threatened or instituted, and agrees that it will assume all responsibility for the investigation, handling, and defense of such claims unless the MCTD notifies CONTRACTOR that it elects to be represented by counsel of its own selection in connection with any such claim. If the MCTD elects to be represented by its own counsel, the MCTD will pay the costs of such representation. The MCTD shall provide such assistance (except financial) for the defense of any claim as may be reasonably required by CONTRACTOR. The MCTD shall not make any admission of liability with respect to a claim or seek to settle or compromise a claim without the prior written consent of CONTRACTOR. CONTRACTOR agrees to inform the MCTD as to all correspondence and proceedings in respect to any claim as to which indemnity is sought and to consult with the MCTD with respect to all matters relating to any claim.

SEC. 407 DISCLAIMER OF LIABILITY

The MCTD will not hold harmless, defend or indemnify CONTRACTOR for any liability whatsoever.

SEC. 408 TERMINATION FOR CONVENIENCE

- A. **In General.** The performance of work under this Contract may be terminated by the MCTD in accordance with this Section in whole, or from time to time in part, whenever the MCTD determines that such termination is in the best interest of the MCTD. Any such termination shall be effected by delivery to CONTRACTOR of sixty (60) calendar days' advance written notice of termination specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective.
- B. **Actions Following Termination Notice.** Upon receipt of a notice of termination, and except as otherwise directed by the MCTD, CONTRACTOR shall: (1) stop work under the Contract on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or Facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination; (4) assign to the MCTD in the manner, at the times, and to the extent directed by the MCTD, all of the right, title and interest of CONTRACTOR under the orders and subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the MCTD, to the extent the MCTD may require, which approval or ratification shall be final for all the purposes of this Section; (6) transfer title to the MCTD and deliver in the manner, at the times, and to the extent, if any, directed by the MCTD, supplies, equipment, and other material produced as a part of, or acquired in connection with the performance of the work terminated, and any information and other property which, if the Contract had been completed, would have been required to be furnished to the MCTD; (7) complete any such part of the work as shall not have been terminated by the notice of termination; and (8) take such action as may be necessary, or as the MCTD may direct, for the protection and preservation of the property related to the Contract which is in the possession of CONTRACTOR and in which the MCTD has or may acquire an interest. Payments by the MCTD to CONTRACTOR shall be made by the date of termination but not thereafter. Except as otherwise provided, settlement of claims by CONTRACTOR under this Section shall be in accordance with the provisions set forth in 48 CFR Part 49, as amended from time to time.
- C. **Return of Vehicles.** Upon termination or completion of the contract, the CONTRACTOR will be responsible for returning all vehicles and equipment to Marin Transit in the condition in which they were received with the exception of normal wear and tear, including, but not limited to, body condition, system(s) condition and function, all ancillary equipment (intact and functional), and overall vehicle operation and performance. Ancillary equipment includes: bicycle racks; fareboxes (installed units, spare units, and parts inventory); farebox portable data units and audit units; MDT's, APC's, Clipper equipment (installed units and spare units), and any other Marin Transit provided equipment.

MCTD, at its discretion, may contract with a qualified, third-party vehicle inspection firm to assist in any return of vehicle turnover inspection process. Such a third-party inspector will conduct individual inspections on each vehicle (within its last preventive maintenance cycle) prior to the return of the vehicle to MCTD. Such inspections will ensure that any necessary repairs are completed and will require the Contractor to conduct any needed repairs. Once the CONTRACTOR is notified of any deficiencies requiring repair, the CONTRACTOR will have seven (7) days in which to complete those repairs.

SEC. 409 TERMINATION BY MUTUAL AGREEMENT

This Contract may be terminated by mutual agreement of the parties. Such termination shall be effective in accordance with a written agreement by the parties. Any other act of termination shall be in accordance with the termination by convenience or default provisions contained in Section 408 and Section 410, respectively.

SEC. 410 TERMINATION FOR DEFAULT

- A. **Events of Default.** The MCTD may, subject to the provisions of subsection B of this Section, by thirty (30) calendar days' advance written notice of default to CONTRACTOR, terminate the whole or any part of this Contract in any one of the following circumstances:
 - a. If CONTRACTOR fails to provide the services in the manner required by this Contract or in accordance with the performance standards articulated herein;
 - b. If CONTRACTOR fails to perform any of the provisions of this Contract in accordance with its terms; or
 - c. If CONTRACTOR fails to make progress in the prosecution of the work under the Contract as to endanger such performance.
- B. **Opportunity to Cure.** If the MCTD determines that an event of default has occurred, the MCTD shall provide CONTRACTOR with the opportunity to cure the default within thirty (30) calendar days after receipt of the default notice under subsection A; provided that the MCTD may, in its sole discretion, provide an additional period for cure if CONTRACTOR demonstrates to the satisfaction of the MCTD that there is a reasonable likelihood that such additional time will allow CONTRACTOR to effectuate a cure.
- C. **Procurement by MCTD.** If the MCTD terminates this Contract in whole or in part as provided in subsection A of this Section, the MCTD may procure, upon such terms and in such manner as the MCTD may deem appropriate, services similar to those so terminated. CONTRACTOR shall be liable to the MCTD for costs associated with the termination of this Contract and the procurement of replacement services by the MCTD, and also for any costs of the replacement supplies or services that are in excess of what the MCTD would have paid under the Contract in the absence of default from the date of termination to the expiration date of the Contract. CONTRACTOR shall continue the performance of this Contract to the extent not terminated under the provisions of this Section. Any disputes arising under this Section that cannot be resolved by CONTRACTOR and the MCTD are subject to resolution pursuant to Section 509 of this Contract.
- D. **Force Majeure.** CONTRACTOR shall not be liable for any failure to perform if CONTRACTOR demonstrates to the satisfaction of the MCTD that the failure to perform the Contract was due to events which were beyond the control and without the fault or negligence of CONTRACTOR and which could not have been avoided or prevented by due diligence and reasonable efforts of CONTRACTOR. Examples of such *Force Majeure* events include acts of God, civil disturbances, fire, war, floods, or other natural disasters, but do not include labor-related incidents, such as strikes or work stoppages.
- E. **Return of Vehicles.** Upon termination of the contract by default, the Contractor will be responsible for the return of vehicle and ancillary equipment in accordance with the return of vehicle provisions contained in Section 408.

- F. **Claims.** Except as otherwise provided, settlement of claims by CONTRACTOR under this termination clause shall be in accordance with the provisions set forth in 48 CFR Part 49, as amended from time to time.

SEC. 411 CANCELLATION OF CONTRACT

In any of the following cases, the MCTD shall have the right to cancel this Contract without expense to the MCTD: (1) CONTRACTOR is guilty of a knowing or intentional misrepresentation; (2) the Contract is obtained by fraud, collusion, conspiracy, or other unlawful means; (3) the Contract conflicts with any statutory or constitutional provision of the State of California or the United States; or (4) there is a change in ownership or control of CONTRACTOR after the date of Contract Award, and the MCTD has not approved the assignment of this Contract to the new owner or controlling entity. This section shall not be construed to limit the MCTD's right to terminate this Contract for convenience or default, as provided in Sections 408 and 410.

SEC. 412 SECTION 13(c) OBLIGATIONS

- A. **In General.** Except as provided in subsection B of this Section, the MCTD shall be administratively and financially responsible for obligations under Section 13(c) of the Federal Transit Act (49 U.S.C. §5333(b)) and the MCTD's July 6, 2000 and March 27, 2003 13(c) Arrangements.
- B. **CONTRACTOR Obligations.**
- a. **Financial Liability.** CONTRACTOR shall have financial liability for any 13(c) claims or obligations that are created by acts or omissions of CONTRACTOR that are not directed by the MCTD. CONTRACTOR agrees that it is bound to the terms of the July 6, 2000 and March 27, 2003 13(c) Arrangements. In addition, CONTRACTOR shall cooperate with the MCTD (including the provision of payroll records and other information) in the resolution or defense of any 13(c) claims or disputes, and in the implementation of any 13(c) remedies.
 - b. **Restrictions on Activities.** CONTRACTOR shall not assist or encourage any employee to file or otherwise pursue a 13(c) claim against the MCTD, or take any action which is contrary to the interests of the MCTD under 13(c) or its 13(c) arrangements or agreements, relating to the termination of services under this Contract, any future transition from CONTRACTOR to another service provider, or any other action or event relating to this Contract. If CONTRACTOR fails to comply with this obligation, CONTRACTOR shall be financially liable for all costs incurred by the MCTD (including attorneys' fees) associated with any 13(c) claims or delays in the receipt of Federal grants.

ARTICLE 5—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

SEC. 501 REPORTING

- A. **CONTRACTOR Obligation.** In order to document services provided under the Contract, CONTRACTOR shall maintain all records requested by the MCTD and as required for good business practices. CONTRACTOR shall take appropriate steps to ensure the proper monitoring of service levels, and maintenance and operations activities related to the services provided under this Contract. CONTRACTOR shall permit authorized representatives of the MCTD to examine all data and records related to this Contract upon request or according to scheduled reporting periods.

- B. **Management Level Reporting.** CONTRACTOR shall provide management level reporting to the MCTD on a monthly basis that includes detailed information describing and quantifying the level of service and the quality of the service provided by CONTRACTOR. For specific service issues, CONTRACTOR shall, upon request of the MCTD, provide additional information. Either party may recommend, from time to time, additions, modifications, or deletions to the reports and reasonable requests shall be accommodated by CONTRACTOR.
- C. **Integrated Data Management System (TransTrack).** CONTRACTOR will provide all inputs and generate all of the reports described below using MCTD's integrated, web-based data collection system. The Data Management System is a customized version of the Web-based Transit Performance Manager™ software package developed by TransTrack Systems, Inc.®. CONTRACTOR will work with MCTD and their contractor, TransTrack, to ensure the proper data integration is set-up to automatically transfer data from CONTRACTOR automated reporting systems (e.g. GFI) on a regular basis to the system. Additional manual inputs such as vehicle maintenance and customer service records will be added daily by CONTRACTOR.

CONTRACTOR will be issued personalized access to the online system for each staff member that is assigned to entering and manage data in TransTrack. MCTD will control the permission levels for each staff member to ensure they have access to edit and review only relevant data to their function.

The CONTRACTOR is directly responsible for the following manual reporting and follow-up activities in the TransTrack system:

- Documenting and responding to customer service inquiries that area assigned to Contractor and documenting responses within the system;
- Documenting all daily service disruptions including the type of disruption, any impacts on service levels (adjustments to number of trips, changes in hours/miles), and any relevant description of the incident;
- Documenting all relevant information for any accident or safety and security incident;
- Documenting all relevant information for any roadcall or equipment failure that occurs during revenue service;
- Documenting all vehicle maintenance issues including when vehicles are not available for service due to maintenance issues, reason for unavailability, and when released for service, etc.;
- Documenting preventative maintenance by vehicle including type of service performed, mileage, etc. This report will match the Contractor's maintenance records and will be audited by Marin Transit on a random announced or unannounced basis.;
- Uploading vehicle fluid sample test results;
- Entering end of year vehicle mileage; and
- Maintaining an updated operator list

D. **Required Reports.**

CONTRACTOR is required to provide all of the reports described in this section at the frequency that is specified for each report. Some reporting requirements may change as MCTD's external reporting requirements change. These reports will be used to monitor performance along with MCTD staff field inspections and CONTRACTOR reporting.

- a. Daily Accident/Incident Report. A daily Accident/incident Report will be e-mailed to MCTD within 24 hours of each accident/incident occurring on a MCTD route. Any major accident involving injuries or significant damage to MCTD vehicles will be immediately reported through direct person-to-person contact, followed by a written summary of the accident/incident. Contractor is also responsible for inputting accident data into TransTrack.
- b. Passenger Complaints/Commendations. Passenger complaints and commendations will be entered directly into TransTrack software on an as received basis. In addition, Contractor is required to follow-up with customer complainant to notify them of complaint receipt and input at close of investigation input resolution into TransTrack. Monthly, MCTD will review entries in database and compile a summary report.
- c. Ridership Reports. A summary of actual revenue hours for each month will be included with the CONTRACTOR's invoice. This invoice will show schedule revenue Hours by route and adjustments made to those routes due to added or missed service. This report should be submitted with ten (10) working days after the end of the month.
- d. Trip and Fare Reports. CONTRACTOR shall submit a Monthly Trip and Fare Report within ten (10) working days after the end of the month. This report will contain daily ridership by type, farebox revenue, revenue hours and miles, deadhead hours and miles, and other desired operating information by route.
- e. Monthly Road Call/Missed Trip/Incident Report. CONTRACTOR shall submit a monthly report of all road calls, missed trips, and incidents within ten (10) working days after the end of each month. Missed trips or major incidents shall also be reported to MCTD immediately via email.
- f. Quarterly Preventive Maintenance and Vehicle Mileage Update Reports. CONTRACTOR shall submit a Quarterly Preventive Maintenance (PM) Report to MCTD indicating the date and mileage for when the last PM was performed for each vehicle and the type of PM (e.g., "A", "B", LOF, Brake Inspection, HVAC Inspection.) that was performed. This report will match the CONTRACTOR's maintenance records and will be audited by MCTD on a random announced or unannounced basis.
- g. FTA-National Transit Database (NTD) Reporting. In accordance with the Federal Transit Administration (FTA) guidelines, CONTRACTOR will be responsible for the tracking, collecting, and preparation of National Transit Database (NTD) report data. MCTD may also require passenger mile sampling, as required by NTD every three years. MCTD will work with CONTRACTOR for developing processes and procedures for collecting and reporting this data.
- h. Federal Triennial Reviews and NTD Reviews. CONTRACTOR will participate in Federal Triennial Reviews pertaining to Marin Transit. This will include NTD audits and Drug and Alcohol Program Reviews.
- i. Annual Drug and Alcohol MIS Report. CONTRACTOR (and any subcontractor(s)) shall prepare and submit their annual Management Information System (MIS) report online, as required by the FTA, and shall provide a signed original report to the MCTD no later than March 10 annually for the previous calendar year's drug and alcohol testing rates. The report must be in accordance with established Federal guidelines.

- j. Operator List. CONTRACTOR must maintain an updated list of all operators and backup operators within Marin Transit's TransTrack system. Any changes to the list (including reason for change, date of change) must be updated within Marin Transit's TransTrack system on a monthly basis.
- k. Special Reports. CONTRACTOR shall prepare and provide any special reports, or more detailed information, requested by the MCTD.

E. Meetings

CONTRACTOR shall meet with the MCTD Project Manager at least on a monthly basis and more frequently as necessary. Meetings with other key MCTD and CONTRACTOR staff will be held on a regular basis, as well as on an as needed basis. The MCTD shall include key CONTRACTOR staff in appropriate meetings related to service, planning, maintenance, and operations, as well as in circumstances in which the MCTD is contemplating the purchase of new equipment or systems or is making significant planning decisions.

SEC. 502 COMPLAINT RESOLUTION

A. Customer Complaints.

- a. Intake of Complaints. CONTRACTOR may be the initial intake of comments from the customers. In the event that a complaint is lodged through the MCTD administrative office or the 511 customer service operators, MCTD will provide CONTRACTOR with the complaint documentation through the TransTrack System.
- b. Required CONTRACTOR Process. CONTRACTOR shall establish a process for the thorough and prompt resolution of all customer complaints, in accordance with this Section. The process shall be completed and closed out in TransTrack within two (2) business days from the date of receipt of the complaint, and shall include, at a minimum, the following:
 - i. contemporaneous documentation of the nature of the complaint;
 - ii. passenger contact information;
 - iii. investigation, follow-up, and investigative reports; and
 - iv. complaint resolution, including any remedial action taken.
- c. Complaint Validity. For purposes of this Section MCTD will consider a customer complaint valid unless MCTD determines that CONTRACTOR has sufficiently documented that the complaint is not valid.

B. Title VI and ADA Complaints.

- a. Required CONTRACTOR Process. In the event MCTD requires assistance with or CONTRACTOR directly receives, Title VI or Americans with Disabilities Act (ADA) complaint, CONTRACTOR shall establish a process for the thorough and prompt consideration of all Title VI and ADA complaints. The MCTD shall be immediately notified of any such complaints in writing. In addition, at a minimum, the process shall include the following:
 - i. Intake procedures and complaint evaluation;

- ii. passenger contact information;
 - iii. investigation, follow-up, and investigative reports (including the information described below in the description of report evaluation criteria in paragraph (2)); and
 - iv. proposed complaint resolution.
- b. **Complaint Investigation.** All Title VI and ADA passenger complaint investigative reports will be evaluated by the MCTD for compliance with Federal requirements. CONTRACTOR is responsible for assuring that each completed investigative report provides full and complete documentation for each of the following requirements;
 - v. Statement of issues;
 - vi. Respondent's reply to each issue; and
 - vii. Findings of fact.
- c. **Complaint Resolution Plan.** Prior to implementation, CONTRACTOR shall submit its Title VI and ADA Complaint Resolution Plan to the MCTD for evaluation and approval.

SEC. 503 ACCIDENT AND INCIDENT REPORTING

In the event of an accident involving vehicle damage, property damage, passenger injury or fatality, an emergency, or other non-routine event, CONTRACTOR shall notify the MCTD Project Manager within one (1) hour after CONTRACTOR learns of such event. CONTRACTOR shall report all media inquiries or media on scene to the MCTD's Project Manager immediately. CONTRACTOR shall, if requested by the MCTD, follow up with specific details from the accident or incident investigation within three (3) hours from the time MCTD was originally notified. CONTRACTOR shall prepare all reports required by the Contract relating to such accident or other non-routine event. CONTRACTOR shall comply with all applicable laws and regulations in the case of any accident or other non-routine event. In addition, the Contractor shall be responsible for replacement costs in accordance with Section 404.

SEC. 504 AUDIT AND INSPECTION OF RECORDS

CONTRACTOR agrees that the MCTD, the Comptroller General of the United States, and the U.S. Secretary of Transportation, or any of their duly authorized representatives, shall, for the purpose of audit and examination, be permitted to inspect all work, materials, payrolls, and other data and records, and to audit the books, records, and accounts relating to the performance of the Contract. Further, CONTRACTOR agrees to maintain all such required books, records, and accounts, at a site in Marin County, California, in a non-archived status, during the term of this Contract (including any option years) and for at least three (3) years after the MCTD has made final payment and all other pending matters are closed. In addition, CONTRACTOR shall assist and cooperate with the MCTD in the audit and monitoring of all program requirements, including EEO compliance, Drug and Alcohol compliance, and Safety/Security compliance, and shall permit the MCTD to perform on-site inspections of CONTRACTOR's procedures and programs.

SEC. 505 OWNERSHIP OF DOCUMENTS

CONTRACTOR agrees that any and all information, in oral or written form, whether obtained from the MCTD, its agents or assigns, or other sources, or generated by CONTRACTOR pursuant to the Contract,

shall not be used for any purpose other than fulfilling the requirements of this Contract. Any documents, reports, or data generated by CONTRACTOR (other than CONTRACTOR's internal documents) in connection with the performance of the Contract shall become the sole property of the MCTD, subject to any rights asserted by the FTA. CONTRACTOR may retain copies of such items for its files. CONTRACTOR shall not release any documents, reports, or data from this project without prior written consent of the MCTD.

SEC. 506 REPLACEMENT SERVICES

A. Plan and Response.

- a. CONTRACTOR Plan. In the event that CONTRACTOR is unable, due to any event not caused by the MCTD or not constituting a *Force Majeure* event under Section 410D of this Contract, to provide services in full compliance with the requirements of this Contract, CONTRACTOR shall deliver a plan to the MCTD within twenty-four (24) hours after the event detailing what actions will be taken and what the schedule will be to resume providing services in full compliance with the requirements of the Contract.
- b. MCTD Response. If CONTRACTOR has not resumed providing services in full compliance with the requirements of the Contract within fifteen (15) calendar days of the event, then the MCTD may obtain the services of a replacement operator or provide the services with its own resources (collectively referred to as "replacement services"). The MCTD may utilize such replacement services as a substitute for all or any part of CONTRACTOR's services, and may maintain such replacement services in effect until either: (a) CONTRACTOR is able to resume performance in full compliance with this Contract; or (b) the MCTD terminates CONTRACTOR and obtains a permanent replacement contractor.

- B. Liability; Limits on Compensation.** If the MCTD utilizes replacement services under this Section, CONTRACTOR shall be liable to the MCTD for (1) the actual amount by which the cost of such services exceeds the amount that would have been payable under this Contract for comparable services; plus (2) the administrative costs incurred by the MCTD in obtaining the replacement services. During the period in which any replacement services are provided, the only compensation payable to CONTRACTOR shall be for any Revenue Hours CONTRACTOR itself actually provides.

- C. Savings Clause.** Any action taken by the MCTD pursuant to this Section in response to CONTRACTOR's failure to perform shall not preclude the MCTD from subsequently finding CONTRACTOR in default of this Contract for the same or any related failure to perform.

SEC. 507 CONTINUITY OF SERVICES

- A. **CONTRACTOR Obligation.** CONTRACTOR recognizes that the services under the Contract are vital to the MCTD and must be continued without interruption and that, upon Contract expiration or termination, another entity, either the MCTD or another provider, may continue those services. CONTRACTOR agrees to: (1) fully cooperate in any procurement process conducted by the MCTD; (2) furnish phase-in training for the new contractor; and (3) exercise its best efforts and cooperate to effect an orderly and efficient transition to the subsequent provider (including, the provision of access to Revenue Vehicles and Facilities, and coordination of equipment transfers, and related actions).
- B. **Transition Requirements.** CONTRACTOR shall, upon the MCTD's written notice (1) furnish phase-in, phase-out services for up to ninety (90) calendar days after the Contract expire or

terminates; and (2) negotiate in good faith a plan with the subsequent provider to determine the nature and extent of phase-in, phase-out service required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the MCTD's approval. CONTRACTOR shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by the Contract are maintained at the required level of proficiency.

- C. **Compensation.** CONTRACTOR shall be reimbursed for all reasonable phase-in, phase-out costs that are incurred and not compensated by the MCTD under the method of compensation in this Contract, within the agreed period after Contract expiration or termination that directly result from phase-in, phase-out operations. At the end of the Contract Term, the MCTD may, in accordance with Section 402F, withhold any amount from the final invoice to CONTRACTOR determined by the MCTD to be due by CONTRACTOR to the MCTD as a result of CONTRACTOR's phase out and a subsequent CONTRACTOR's phase in of contract operations. The MCTD shall require its subsequent provider to indemnify CONTRACTOR for liability that directly results from CONTRACTOR's phase-in, phase-out operations during such agreed period, provided that such indemnification shall not extend to liability that arises out of negligent or willful acts or omissions of CONTRACTOR. The MCTD shall also require the subsequent provider to name CONTRACTOR as an additional insured (without exclusions) for purposes of general liability coverage in the performance of phase-in, phase-out operations.

SEC. 508 EMERGENCIES

- A. **Emergency Preparedness Plan.** CONTRACTOR shall develop, implement, and maintain an Emergency Preparedness Plan and submit to the MCTD on an annual basis. At a minimum, the Plan shall address:
- a. The ability to prioritize service requests to manage resources during an emergency.
 - b. Intra-agency and interagency communication systems. Radio communications during emergencies. CONTRACTOR shall use landlines or mobile phones as a primary method of communication with MCTD and the Marin County Emergency Operation Center, as needed. MCTD has determined that MERA and other radios will be used as a backup method of communication. CONTRACTOR shall coordinate with MCTD to predetermine which backup method will be used in case landlines and mobile phones are not available.
 - c. Backup capabilities for communications, dispatch, and power supply, and access to fuel resources.
 - d. A plan to support staffing demands for expanded operations and identification of essential personnel.
 - e. An inventory of vehicles, total seating capacity, maximum number of securement positions, and personnel available to direct, support, and deliver service and identifies staff that can perform more than one role.
 - f. A process to determine staff that will actually report to work during a disaster.
 - g. Anticipating hours of service rules that apply to drivers holding a commercial driver's license.
 - h. Procedures for complete documentation of services provided.
 - i. After action evaluation of CONTRACTOR emergency response and application of lessons learned.

SEC. 509 DISPUTES

- A. **Applicability.** Any dispute between CONTRACTOR and the MCTD relating to the implementation or administration of this Contract shall be resolved in accordance with this Section.
- B. **Informal Resolution.** The Parties shall first attempt to resolve the dispute informally in meetings or communications between CONTRACTOR and the MCTD Project Manager. If the dispute remains unresolved fifteen (15) Days after it first arises, CONTRACTOR may request the MCTD Assistant General Manager to issue a recommended decision on the matter in dispute. The MCTD Assistant General Manager shall issue the recommended decision in writing within thirty (30) Days and provide a copy to CONTRACTOR.
- C. **Interim Review.** If CONTRACTOR contests the recommended decision of the MCTD Assistant General Manager, CONTRACTOR shall provide its reasons for contesting the decision and the decision shall be reviewed by the Deputy General Manager, who may modify or confirm the decision. The MCTD General Manager may, upon request of CONTRACTOR, review the action of the Deputy General Manager and may modify or confirm the Deputy General Manager's recommended decision.
- D. **Review by MCTD Governing Body.** The recommended decision of the MCTD shall become final unless, within fifteen (15) Days of receipt of such recommended decision, CONTRACTOR submits a written request for review of the decision to the MCTD Governing Body. In connection with any such review, CONTRACTOR and the MCTD General Manager shall be afforded an opportunity to be heard and to offer evidence on the issues presented. If the dispute remains unresolved after review and CONTRACTOR objects to the decision issued by the MCTD Governing Body, CONTRACTOR may seek judicial resolution of the dispute in the Eighth Judicial District Court of California. Prior to seeking judicial resolution in the Eighth Judicial District Court, the parties may mutually agree to mediate the dispute.
- E. **CONTRACTOR Responsibility.** Pending final resolution of a dispute under this Section, CONTRACTOR shall proceed diligently with performance in accordance with this Contract and the MCTD's recommended decision.

SEC. 510 INSPECTION OF WORK

- A. **Right to Inspect.** All work (which term in this Section includes services performed, material furnished or utilized in the performance of services, and workmanship in the performance of services) shall be subject to inspection and testing by the MCTD to the extent practicable at all times and places during the term of this Contract. All inspections by the MCTD shall be made in such a manner as to not unduly delay the work. The MCTD shall have the right to enter the premises used by CONTRACTOR for the purpose of inspecting and auditing all data and records which pertain to CONTRACTOR's performance under this Contract, and observing management and operational practices. The MCTD shall also have the right to enter the premises used by CONTRACTOR for the purpose of inspecting vehicles that are used to provide services under this Contract.
- B. **Corrections and Adjustments.** If any work performed is not in conformity with the requirements of the Contract, the MCTD shall have the right to require CONTRACTOR to perform the work again in conformity with such requirements at no cost to the MCTD. When the work to be performed is of such a nature that the defect cannot be corrected by re-performing the work, the MCTD shall have the right to: (1) require CONTRACTOR to immediately take all necessary steps to ensure future performance of the work in conformity with the requirements of the Contract, and (2) reduce the Contract price to reflect the reduced value of the work performed; or (3) assess appropriate liquidated damages. In the event CONTRACTOR fails promptly to

perform the work again or take necessary steps to ensure future performance of the work in conformity with the requirements of the Contract, the MCTD shall have the right to either by contract or otherwise have the work performed in conformity with the Contract requirements and charge to CONTRACTOR any costs to the MCTD that are directly related to the performance of such work, or terminate the Contract for default as provided in Section 410.

SEC. 511 SUBCONTRACTING OF CONTRACT WORK AND TRANSFER OF INTERESTS

- A. **Requirement for MCTD Approval.** CONTRACTOR may not enter into any subcontract without the prior written approval of the MCTD, which will not be unreasonably withheld. In any case in which CONTRACTOR desires to subcontract, it shall provide the MCTD with all proposed subcontracting agreements and documents (including scope of work and terms of compensation). If permitted to subcontract, CONTRACTOR shall be fully responsible for all work performed by its subcontractors. Any approval of a subcontract shall not be construed as making the MCTD a party to such subcontract, giving the subcontractor privity of contract with the MCTD, or subjecting the MCTD to liability of any kind to any subcontractor. Further, the entering into of a subcontract shall not, under any circumstances, relieve CONTRACTOR of its liability and obligations under this Contract and all transactions with the MCTD must be through CONTRACTOR.
- B. **Effect of Subcontracting.** CONTRACTOR may not, by subcontract, modify its obligation to perform in full accordance with its Proposal, change its Key Personnel, alter any of its required programs, or otherwise modify the basis upon which CONTRACTOR was selected and the Contract award made. Any action of CONTRACTOR in violation of the preceding sentence shall constitute a breach of the Contract and an act of default.
- C. **Required Subcontract Terms.** CONTRACTOR shall include in each subcontract (at all tiers) appropriate terms and conditions to ensure that the subcontractor shall have the same duties and obligations to CONTRACTOR for its work that CONTRACTOR has to the MCTD for such work under this Contract, that the subcontractors shall perform all of its work in full compliance with the requirements and standards of this Contract, and that the subcontractor shall comply with the other applicable provisions of this Contract, including the Federal laws and regulations identified in Attachment K.
- D. **Assignment.** There shall be no assignment/transfer of interests or delegation of CONTRACTOR's rights, duties, or responsibilities under this Contract, except at the direction or with the prior written approval of the MCTD.

SEC. 512 INDEPENDENT CONTRACTOR

Under the terms of the Contract, CONTRACTOR is an independent contractor and has and retains full control and supervision of the services performed by and full control over the employment and direct compensation and discharge of all persons, other than MCTD employees, assisting in the performance of its services. CONTRACTOR agrees to be solely responsible for all matters relating to wages, hours of work, and working conditions and payment of employees, including compliance with social security, all payroll taxes and withholdings, unemployment compensation, workers' compensation, and all other requirements relating to such matters. CONTRACTOR agrees to be responsible for its own acts and those of its subordinates, employees, and any and all subcontractors during the term of the Contract.

SEC. 513 LICENSING, PERMITS, AND TAXES

CONTRACTOR shall be appropriately licensed for the work required pursuant to this Contract. The cost

for any required licenses or permits shall be the responsibility of CONTRACTOR. CONTRACTOR shall be liable for any and all taxes due as a result of the Contract.

SEC. 514 LACK OF FUNDS

- A. **Funding Requirement.** Entering into the Contract is subject to receipt by the MCTD of local and Federal funds adequate to carry out the provisions in full.
- B. **Cancellation or Reductions.** The MCTD may cancel or reduce the amount of service to be rendered if the MCTD determines that such action is in the MCTD's best interests, or there will be a lack of funding available for the service. In such event, the MCTD will notify CONTRACTOR in writing thirty (30) calendar days in advance of the date such cancellation or reduction is to be effective. A cancellation of the Contract for Lack of Funds will be processed in accordance with the Termination for Convenience provisions of Section 408. If a reduction in Contract services for Lack of Funds results in a decrease in Revenue Hours in a Contract Year in excess of the applicable percentage set forth in Section 305F(a)(i), the service change shall be processed in accordance with subsection F of Section 305, Allowable Service Changes.

SEC. 515 CONFLICT OF INTEREST

- A. **General Rule for MCTD Employees.** No employee, officer, agent, immediate family member or Board member of the MCTD shall participate in the selection, award, or administration of the Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when one of the following has a financial or other interest in any firm proposing on or selected for the award:
 - a. The employee, officer, agent or Board member,
 - b. Any member of the employee's immediate family;
 - c. The employee's business partner; or
 - d. An organization that employs, or is about to employ, any of the above.
- B. **Gratuities.** The MCTD's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, subcontractors, or other parties to subagreements.

SEC. 516 DEBARRED

CONTRACTOR has provided the MCTD with a certification addressing its debarment and suspension status and that of its principals. CONTRACTOR shall promptly inform the MCTD of any change in the suspension or debarment status of CONTRACTOR or its principals during the term of this Contract.

SEC. 517 ANTIDISCRIMINATION AND EEO REQUIREMENTS

- A. **General Requirements.** CONTRACTOR shall not in any way, directly or indirectly, in the performance of this Contract, discriminate against any person because of age, race, color, disability, sex, national origin, or religious creed.
- B. **Compliance with EEO Requirements.**

- a. **CONTRACTOR Duty.** CONTRACTOR shall comply with all EEO Program requirements in FTA Circular 4704.1, Equal Employment Opportunity Program Guidelines, or any updated version thereof.
- b. **Cooperation in Audits.** CONTRACTOR shall cooperate in any audits performed by FTA and shall cooperate with and assist the MCTD in the monitoring and auditing program requirements including permitting the MCTD to perform onsite inspections for the program administration/management guidelines, and procedures. This requirement shall include providing the MCTD with copies of records related to CONTRACTOR's EEO efforts prior to each site visit.
- c. **EEO Plan.** CONTRACTOR shall, no later than thirty (30) days after the end of each calendar year, prepare and submit to the MCTD, an EEO Plan (if applicable) or confirm in writing that the copy on file with the MCTD is the most active plan. The plan shall be consistent with established Federal guidelines.
- d. **Program Amendments.** CONTRACTOR shall comply with all program amendments as required by the FTA and/or the MCTD and all applicable Federal and State mandates.

SEC. 518 COMPLIANCE WITH LAWS AND REGULATIONS

CONTRACTOR shall give all notices and comply with all Federal, State, and local laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Contract, including, but not limited to, the laws referred to in these provisions of this Contract and the Federal laws, regulations and requirements specified in Attachment J to this Contract. If the Contract documents are at variance therewith in any respect, any necessary changes shall be incorporated by appropriate modification. Upon request, CONTRACTOR shall furnish to the MCTD General Manager certificates of compliance with all such laws, orders, and regulations.

SEC. 519 WAIVER OF TERMS OR CONDITIONS

The failure of the MCTD or CONTRACTOR to enforce one or more of the terms or conditions of this Contract or to exercise any of its rights or privileges, or the waiver by the MCTD of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

SEC. 520 INTERPRETATION, JURISDICTION, AND VENUE

All contractual agreements shall be subject to, governed by, and construed and interpreted solely according to the laws of the State of California. CONTRACTOR hereby consents and submits to the jurisdiction of the appropriate courts of California or of the United States having jurisdiction in California for adjudication of any suit or cause of action arising under or in connection with the Contract documents, or the performance of such Contract, and agrees that any such suit or cause of action may be brought in any such court.

SEC. 521 CONSTRUCTION

For the purposes of this Contract the use of the words "include" or "including" followed by a list is not intended to indicate that the list is an all-inclusive list.

SEC. 522 OFFICIAL RECEIPT

Communications shall be considered received at the time actually received by the addressees or designated agents. Communications to the MCTD should be addressed to the MCTD Project Manager and to the Contracting Officer, as follows:

Marin Transit
711 Grand Ave.
San Rafael, California 94901

Communications to CONTRACTOR shall be addressed as follows:

Marin Airporter

8 Lovell Avenue
San Rafael, California 94901

SEC. 523 RESTRICTIONS ON ASSIGNMENT

This Contract or any portion hereof shall not be assigned, nor shall the interests, rights, duties or responsibilities of CONTRACTOR be transferred or delegated, unless the MCTD in its sole discretion grants prior written approval thereto. This provision extends to any purchase, merger, or consolidation (in whole or in part), and to any change in control, which would cause CONTRACTOR's responsibilities under this Contract to be transferred to or assumed by a new, different, or restructured entity. This provision is separate and apart from the provisions concerning subcontracting set forth in Section 511.

SEC. 524 SEVERABILITY

In the event any provision of this Contract is declared or determined to be unlawful, invalid, or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions of the Contract and each provision of the Contract will be and is deemed to be separate and severable from each other provision.

SEC. 525 ENTIRE AGREEMENT; AMENDMENT REQUIRED

This Contract constitutes the entire agreement between CONTRACTOR and the MCTD, and supersedes all prior negotiations, agreements, and understandings with respect thereto. No change, modification, or amendment to the obligations or responsibilities of the parties under the terms of this Contract shall be effective unless it is made by written Amendment, considered and approved by the MCTD Governing Body, and duly executed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth below their endorsements.

MARIN COUNTY TRANSIT DISTRICT

MARIN AIRPORTER

By: _____

By: _____

COMPENSATION

Marin Transit Price Summary

Cost per Revenue Hour - Package 1 Service	Base Years			Option Years	
	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23
Hourly Rate	\$49.84	\$51.34	\$52.89	\$54.49	\$56.13
Fixed Monthly Fee	\$167,366	\$172,387	\$177,558	\$182,885	\$188,372

One Time Costs

Start-Up Expense	<u>\$10,000</u>
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ATTACHMENT B

MCTD PROVIDED EQUIPMENT

Package 1 Contract - Onboard Equipment Inventory

Vehicle #	Mobile Data Terminal		Annunciation System		Automatic Passenger Counter		Headsigns			Cameras		Fare Collection Devices
	Manufacturer	Model	Manufacturer	Type	Manufacturer	Type	Manufacturer	Program Device	Signs	Manufacturer	Devices	
92	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	1-door system	Twinvision	USB	Front/Side	Seon	4-camera system+1 Trooper TL4 DVR	Cubic+36" Odysset Farebox
100	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	1-door system	Twinvision	PC Card	Front/Side	Seon	4-camera system+1 Trooper TL4 DVR	Cubic+36" Odysset Farebox
105	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	1-door system	Twinvision	USB	Front/Side	Seon	4-camera system+1 Trooper TL4 DVR	Cubic+36" Odysset Farebox
108	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	1-door system	Twinvision	USB	Front/Side	Seon	4-camera system+1 Trooper TL4 DVR	Cubic+36" Odysset Farebox
109	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	1-door system	Twinvision	USB	Front/Side	Seon	4-camera system+1 Trooper TL4 DVR	Cubic+36" Odysset Farebox
110	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	1-door system	Twinvision	USB	Front/Side	Seon	4-camera system+1 Trooper TL4 DVR	Cubic+36" Odysset Farebox
111	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	1-door system	Twinvision	USB	Front/Side	Seon	4-camera system+1 Trooper TL4 DVR	Cubic+36" Odysset Farebox
112	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	1-door system	Twinvision	USB	Front/Side	Seon	4-camera system+1 Trooper TL4 DVR	Cubic+36" Odysset Farebox
113	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	1-door system	Twinvision	USB	Front/Side	Seon	4-camera system+1 Trooper TL4 DVR	Cubic+36" Odysset Farebox
114	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	1-door system	Twinvision	USB	Front/Side	Seon	4-camera system+1 Trooper TL4 DVR	Cubic+36" Odysset Farebox
115	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	1-door system	Twinvision	USB	Front/Side	Seon	4-camera system+1 Trooper TL4 DVR	Cubic+36" Odysset Farebox
1501	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	2-door system	Hanover	KeyLo	Front/Side/Rear	Seon	7-camera system+TX8 DVR	Cubic+36" Odysset Farebox
1502	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	2-door system	Hanover	KeyLo	Front/Side/Rear	Seon	7-camera system+TX8 DVR	Cubic+36" Odysset Farebox
1503	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	2-door system	Hanover	KeyLo	Front/Side/Rear	Seon	7-camera system+TX8 DVR	Cubic+36" Odysset Farebox
1504	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	2-door system	Hanover	KeyLo	Front/Side/Rear	Seon	7-camera system+TX8 DVR	Cubic+36" Odysset Farebox
1505	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	2-door system	Hanover	KeyLo	Front/Side/Rear	Seon	7-camera system+TX8 DVR	Cubic+36" Odysset Farebox
1506	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	2-door system	Hanover	KeyLo	Front/Side/Rear	Seon	7-camera system+TX8 DVR	Cubic+36" Odysset Farebox
1507	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	2-door system	Hanover	KeyLo	Front/Side/Rear	Seon	7-camera system+TX8 DVR	Cubic+36" Odysset Farebox

Vehicle #	Mobile Data Terminal		Annunciation System		Automatic Passenger Counter		Headsigns			Cameras		Fare Collection Devices
	Manufacturer	Model	Manufacturer	Type	Manufacturer	Type	Manufacturer	Program Device	Signs	Manufacturer	Devices	
1508	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	2-door system	Hanover	KeyLo	Front/Side/Rear	Seon	7-camera system+TX8 DVR	Cubic+36" Odysset Farebox
1509	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	2-door system	Hanover	KeyLo	Front/Side/Rear	Seon	7-camera system+TX8 DVR	Cubic+36" Odysset Farebox
1510	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	2-door system	Hanover	KeyLo	Front/Side/Rear	Seon	7-camera system+TX8 DVR	Cubic+36" Odysset Farebox
1511	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	2-door system	Hanover	KeyLo	Front/Side/Rear	Seon	7-camera system+TX8 DVR	Cubic+36" Odysset Farebox
1680	Syncromatics	MDT-600	Syncromatics	AVAS	Syncromatics	1-door system	Hanover	USB	Front/Side	Seon	4-camera system+1 Trooper TL4 DVR	Cubic+36" Odysset Farebox

See CONTRACTOR's Proposal page 41.

ATTACHMENT D VEHICLES

Package 1 Contract - Vehicle Inventory

Table 1: Vehicle Summary

Package	Vehicle #	VIN	License	Subfleet	Length	Fuel Type	Mileage (FY17)	Acquisition Date	In-Service Date	Replacement Year
1	92	1FD4E45S58DB59391	1322157	2008 Ford Aerotech	24 ft	Gasoline (GA)	352,994		1/29/2009	2015
1	100	1FD4E4FS7BDA34651	1366424	2011 Ford Aerotech	24 ft	Gasoline (GA)	276,730	5/5/2011	7/1/2011	2018
1	105	1FD4E4FS9DDA72661	1397121	2013 Ford Aerotech	24 ft	Gasoline (GA)	132,723	7/24/2013	8/1/2013	2020
1	108	1FD4E4FS6DDA83875	1397096	2013 Ford Aerotech	24 ft	Gasoline (GA)	233,183	7/7/2013	8/1/2013	2020
1	109	1FD4E4FS8DDA83876	1397125	2013 Ford Aerotech	24 ft	Gasoline (GA)	238,825	7/24/2013	8/1/2013	2020
1	110	1FD4E4FS9DDA83868	1397097	2013 Ford Aerotech	24 ft	Gasoline (GA)	237,745	7/7/2013	8/1/2013	2020
1	111	1FD4E4FS7DDA83870	1397095	2013 Ford Aerotech	24 ft	Gasoline (GA)	235,425	7/7/2013	7/16/2014	2020
1	112	1FD4E4FS9DDA83871	1397091	2013 Ford Aerotech	24 ft	Gasoline (GA)	182,439	8/1/2013	7/16/2014	2020
1	113	1FD4E4FS9DDA83872	1397092	2013 Ford Aerotech	24 ft	Gasoline (GA)	230,237	7/7/2013	8/1/2013	2020
1	114	1FD4E4FS2DDA83873	1397093	2013 Ford Aerotech	24 ft	Gasoline (GA)	229,266	7/7/2013	8/1/2013	2020
1	115	1FD4E4FS4DDA83874	1397094	2013 Ford Aerotech	24 ft	Gasoline (GA)	266,901	7/7/2013	8/1/2013	2020
1	1501	15GGE301XG1092953	1336039	2015 Gillig	30 ft	Hybrid Diesel (HD)	49,852	2/8/2016	4/13/2016	2027
1	1502	15GGE3011G1092954	1336040	2015 Gillig	30 ft	Hybrid Diesel (HD)	34,405	2/8/2016	8/12/2016	2027
1	1503	15GGE3013G1092955	1336041	2015 Gillig	30 ft	Hybrid Diesel (HD)	43,009	2/8/2016	5/16/2016	2027
1	1504	15GGE3015G1092956	1432037	2015 Gillig	30 ft	Hybrid Diesel (HD)	46,430	2/8/2015	5/9/2016	2027
1	1505	15GGD3012F1181501	1336020	2015 Gillig	40 ft	Hybrid Diesel (HD)	58,290	12/7/2015	1/19/2016	2027

Package	Vehicle #	VIN	License	Subfleet	Length	Fuel Type	Mileage (FY17)	Acquisition Date	In-Service Date	Replacement Year
1	1506	15GGD3012G1181502	1336034	2015 Gillig	40 ft	Hybrid Diesel (HD)	49,690	2/8/2016	3/9/2016	2027
1	1507	15GGD3014G1181503	1336035	2015 Gillig	40 ft	Hybrid Diesel (HD)	59,276	2/8/2016	3/14/2016	2027
1	1508	15GGD3016G1181504	1336036	2015 Gillig	40 ft	Hybrid Diesel (HD)	50,736	2/8/2016	3/9/2016	2027
1	1509	15GGD3018G1181505	1336037	2015 Gillig	40 ft	Hybrid Diesel (HD)	47,783	2/8/2016	3/14/2016	2027
1	1510	15GGD301XG1181506	1336038	2015 Gillig	40 ft	Hybrid Diesel (HD)	56,952	2/8/2016	4/30/2016	2027
1	1511	15GGD3011G1181507	1432036	2015 Gillig	40 ft	Hybrid Diesel (HD)	47,636	2/8/2016	5/9/2016	2027
1	1680	1FDE4FS0GDC56729	1474532	2016 El Dorado Aerotech 240	24 ft	Gasoline (GA)	54,430	8/10/2016	8/11/2016	2023

ATTACHMENT E TRANSITION AND START-UP PLAN

Pursuant to Section 104 B. of this Contract, the CONTRACTOR will provide this plan within 45 days of Contract approval.

ATTACHMENT F STAFFING AND PERSONNEL PLAN

Package 1 – Key Personnel

Staff Member	Title	% Dedicated to Package 2
Randy Kokke	President	30%
Lawrence Forrest	Operation Manager	100%
Donald Ambrose	Safety and Training Manager	50%
Chris Rardin	Maintenance Manager	30%

Package 1 – All Personnel

Vehicle Operators	50-60 Full Time
President	1 Full Time
Operations Manager	1 Full Time
Chief Financial Officer	20% Dedicated
Road Supervisor	2 Full Time 2 Part Time
Safety and Training Manager	1 Full Time
Bookkeeper & HR Manager	35% Dedicated
Maintenance Manager	1 Full Time
A-Level Mechanic	1 Full Time 2 Part Time 2-10% Dedicated
Vehicle Service Worker	5 Part Time

ATTACHMENT G EMPLOYEE TRAINING PROGRAM

Pursuant to Section 104 B. of this Contract, the CONTRACTOR will provide this plan within 45 days of Contract approval.

ATTACHMENT H VEHICLE MAINTENANCE PROGRAM

Pursuant to Section 104 B. of this Contract, the CONTRACTOR will provide this plan within 45 days of Contract approval.

ATTACHMENT I SAFETY, SECURITY, AND EMERGENCY MANAGEMENT PLAN

Pursuant to Section 104 B. of this Contract, the CONTRACTOR will provide this plan within 90 days of Contract approval.

SECTION 1. TERMS AND CONDITIONS

1. To the extent required by law, Vendor shall be licensed by the State of California to furnish and deliver all goods and services provided for herein.
2. The purchase order number and "Invoice To:" name on the face of this form must appear on all invoices, shipping papers, packages and correspondence.
3. No charge for packing or drayage will be allowed unless specified in order.
4. The Marin County Transit District will not be responsible for goods delivered or services rendered without an order on this form. When this order covers a continuing service rendered over a stated period of time, a new order must be obtained upon expiration of the time period to authorize continuance of the service.
5. Taxes
 - a. Marin County Transit District is exempt from payment of Federal Excise Tax. No Federal Tax should be included in price. Exemption certificates will be furnished when applicable.
 - b. Where applicable, Vendor shall calculate payment for all sales, unemployment, old age pension and other taxes imposed by local, city, state or federal law and shall include such expenses in the total contract price.
6. Any delivered commodity not meeting required specifications will be returned at Vendor's expense. Cost of inspection of deliveries or offers for delivery, which do not meet specifications, will be a chargeable expense to the Vendor.
7. Vendor agrees to indemnify, defend, and hold Marin County Transit District harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees which it may incur as a consequence of this Agreement, and from any and all claims and losses to anyone who may be injured or damaged by reason of Vendor's willful misconduct or negligent performance of this Agreement.
8. Vendor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability.
9. Vendor shall comply with any and all federal, state and local laws (including, but not limited to, Marin County Code Chapters 23.13 – Nuclear Free Zone and 2.50 – Living Wage) affecting the goods or services covered by this Agreement.
10. Vendor shall comply with all applicable Federal Contract Clauses as outlined in Section 2, below.
11. Vendor has read and understands the foregoing, and agrees to be bound by all of the included terms and conditions.
12. This Agreement may be amended or modified only by written Agreement of the parties.
13. This Agreement shall be construed in accordance with the laws of the State of California, and the parties hereto agree that the venue shall be in Marin County, California.

SECTION 2. FEDERAL CONTRACT CLAUSES

1. Access to Records and Reports

The following access to records requirements apply to this Contract:

Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.

Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

2. Charter Service

The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that Marin Transit and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

3. Clean Air Act and Federal Water Pollution Control Act

The Contractor agrees:

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

4. Civil Rights Laws and Regulations

Marin Transit is an Equal Opportunity Employer. As such, Marin Transit agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from

inconsistent requirements imposed by Federal laws or regulations, Marin Transit agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof:

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

Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42

U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

5. Disadvantaged Business Enterprise (DBE)

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this

contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). The contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent. Unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

It is the policy of Marin Transit and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of Marin Transit to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. Marin Transit shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, Marin Transit may consider during its review of the Bidder/Offeror's submission package, the Bidder/Offeror's documented history of non-compliance with DBE requirements on previous contracts with Marin Transit.

Contract Assurance. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these

requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Marin Transit deems appropriate.

DBE Participation. For the purpose of this Contract, Marin Transit will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by the [*certifying agency or the Unified Certification Program (UCP)*]; or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by Marin Transit.

DBE Participation Goal. The DBE participation goal for this Contract is set at 6%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling not less than 6% of the total Contract price. Failure to meet the stated goal at the time of proposal submission may render the Bidder/Offeror non-responsive.

Proposed Submission. Each Bidder/Offeror, as part of its submission, shall supply the following information:

1. A completed DBE Utilization Form (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
2. A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the DBE Participation Schedule (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by Marin Transit.
3. An original DBE Letter of Intent (see below) from each DBE listed in the DBE Participation Schedule.
4. An original DBE Affidavit (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.

Good Faith Efforts. If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), Marin Transit will consider the Bidder/Offeror's documented good faith

efforts to meet the goal in determining responsiveness. The types of actions that Marin Transit will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

1. Documented communication with Marin Transit's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, Marin Transit generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
3. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

Administrative Reconsideration. Within five (5) business days of being informed by Marin Transit that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to Marin Transit's Director of Policy and Legislative Programs. The Director of Policy and Legislative Programs will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. Marin Transit will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate

good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Termination of DBE Subcontractor. The Contractor shall not terminate the DBE subcontractor(s) listed in the DBE Participation Schedule (see below) without Marin Transit's prior written consent. Marin Transit may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify Marin Transit in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

Continued Compliance. Marin Transit shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, it will be the responsibility of the Contractor to submit quarterly written reports to Marin Transit that summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to Marin Transit. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

1. Marin Transit to have access to necessary records to examine information as Marin Transit deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
2. The authorized representative(s) of Marin Transit, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.

3. All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.]

Sanctions for Violations. If at any time Marin Transit has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, Marin Transit may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

1. Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
2. Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

DBE UTILIZATION FORM

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

_____ The Bidder/Offer is committed to a minimum of 6% DBE utilization on this contract.

_____ The Bidder/Offeror (if unable to meet the DBE goal of 6%) is committed to a minimum of % DBE utilization on this contract and submits documentation demonstrating good faith efforts.

DBE PARTICIPATION SCHEDULE

The Bidder/Offeror shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

DBE IDENTIFICATION AND INFORMATION FORM

Name and Address	Contact Name and Telephone Number	Participation Percent (Of Total Contract Value)	Description of Work to Be Performed	Race and Gender of Firm

6. Employee Protections

Contract Work Hours and Safety Standards for Awards Not Involving Construction-The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-Construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

7. 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.

8. Fly America Requirements for Air Transportation

Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that Marine Transit and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

9. Government-Wide Debarment and Suspension

Debarment, Suspension, Ineligibility and Voluntary Exclusion. The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and

Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Marin Transit. If it is later determined by Marin Transit that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Marin Transit, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. Lobbying Restrictions.

The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was 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 of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

11. No Government Obligation to Third Parties

The Marin Transit and 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 the Marin Transit, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FT. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

12. Program Fraud and False or Fraudulent Statements and Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a

contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

13. Public Transportation Employee Protective Arrangements

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.

Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.

Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

14. Recycled Products

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.

15. Safe Operation of Motor Vehicles

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

Distracted Driving. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or

rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

16. School Bus Operations

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

- a. Federal transit laws, specifically 49 U.S.C. § 5323(f);
- b. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
- c. Any other Federal School Bus regulations; or
- d. Federal guidance, except as FTA determines otherwise in writing. If Contractor violates this School Bus Agreement, FTA may:
 1. Bar the Contractor from receiving Federal assistance for public transportation; or
 2. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

17. Substance Abuse Requirements

Substance Abuse Testing. The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of [name of State], or Marin Transit, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before [insert date] and to submit the Management Information System (MIS) reports before [insert date before March 15] to General Manager, Marin Transit, 711 Grand Avenue, Ste. 101, San Rafael, CA 94901. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the *Federal Register*.

18. Termination

Termination for Convenience (General Provision). Marin Transit may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Marin Transit to be paid the Contractor. If the

Contractor has any property in its possession belonging to Marin Transit, the Contractor will account for the same, and dispose of it in the manner Marin Transit directs.

Termination for Default [Breach or Cause] (General Provision). If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, 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, Marin Transit may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by Marin Transit that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, Marin Transit, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Opportunity to Cure (General Provision). Marin Transit in its sole discretion may, in the case of a termination for breach or default, allow the Contractor thirty (30) 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 Marin Transit's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within thirty (30) days after receipt by Contractor of written notice from Marin Transit setting forth the nature of said breach or default, Marin Transit shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Marin Transit from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

Termination for Convenience (Professional or Transit Service Contracts). Marin Transit, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Marin Transit shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Convenience of Default (Cost-Type Contracts). Marin Transit may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of Marin Transit or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from Marin Transit, or property supplied to the Contractor by Marin Transit. If the termination is for default, Marin Transit may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion

to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Marin Transit and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Marin Transit, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, Marin Transit determines that the Contractor has an excusable reason for not performing, Marin Transit, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

19. Violation and Breach of Contract

Rights and Remedies of Marin Transit. Marin Transit shall have the following rights in the event that Marin Transit deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, Marin Transit shall define breach in the Contract terms.

Rights and Remedies of Contractor. Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by Marin Transit, the Contractor expressly agrees that no default, act or omission of Marin Transit shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless Marin Transit directs Contractor to do so) or to suspend or abandon performance.

Remedies. Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, Marin Transit will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before Marin Transit takes action contemplated herein, Marin Transit will provide the Contractor with sixty (60) days written notice that Marin Transit considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes. Example 1: Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Marin Transit's General Manager. This decision shall be final and conclusive unless within [10] 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.

Example 2: Marin Transit and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within Marin Transit and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court *de novo* and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with Marin Transit's direction or decisions made thereof.

Performance during Dispute. Unless otherwise directed by Marin Transit, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages. Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies. Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between Marin Transit and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which Marin Transit is located.

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

ATTACHMENT K DRUG AND ALCOHOL POLICY PROGRAM

MARIN TRANSIT DRUG & ALCOHOL TESTING PROGRAM CONTACTS

Any questions regarding Marin Transit's Drug and Alcohol policy or any other aspect of the substance abuse policy should be directed to the following individual(s)

Marin Transit's Drug and Alcohol Program Manager

Name: Amy Van Doren
Title: Director of Policy & Legislative Programs
Address: 711 Grand Avenue, Suite 110
San Rafael, CA 94901

Telephone Number: 415-226-0859

Marin Transit's purchased transportation service contractors will fill out and maintain this staffing plan as a component of Marin Transit's requirements for their Drug and Alcohol Test Programs.

Purchased Transportation Contractor Contacts (required)Drug and Alcohol Program Manager

Name:
Title:
Address:
Telephone Number:

Medical Review Officer

Name:
Title:
Address:
Telephone Number:

Substance Abuse Professional

Name:
Title:
Address:
Telephone Number:

HHS Certified Laboratory Primary Specimen

Name:
Address:
Telephone Number:

HHS Certified Laboratory Split Specimen

Name:
Address:
Telephone Number:



8 Lovell Avenue, San Rafael, CA 94901
415.256.8833 • Fax 415.256.8839

MARIN AIRPORTER

DRUG AND ALCOHOL TESTING POLICY

revised 1/25/2018

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1. PREAMBLE

Marin Airporter is adopting this policy to comply with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process.

2. PURPOSE

2.1. Marin Airporter provides transportation services for the residents of Marin County. Part of our mission is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. In keeping with this mission, Marin Airporter declares that the unlawful manufacture, distribution, dispense, possession, or use of controlled substances or misuse of alcohol is prohibited for all employees.

2.2. Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.

3. APPLICABILITY

3.1. This Drug and Alcohol Testing Policy applies to all safety-sensitive employees (full- or part-time) when performing safety sensitive duties.

3.2. A safety-sensitive function is operation of transportation services including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), maintenance of a revenue service vehicle or equipment used in revenue service and any other transportation employee who is required to hold a Commercial Drivers License. Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment used in revenue service. A list of safety-sensitive positions who perform one or more of the above mentioned duties is provided in Attachment A. Supervisors are only safety sensitive if they perform one of the above functions. Volunteers are considered safety sensitive and subject to testing if they are required to hold a CDL, or receive remuneration for service in excess of actual expense.

4. DEFINITIONS

Accident: An occurrence associated with the operation of a vehicle even when not in revenue service, if as a result:

- a. An individual dies;
- b. An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
- c. One or more vehicles incur disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. For purposes of this definition, disabling damage means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

Adulterated specimen: A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

Alcohol Concentration: Expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.

Aliquot: A fractional part of a specimen used for testing, it is taken as a sample representing the whole specimen.

Canceled Test: A drug test that has been declared invalid by a Medical Review Officer. A canceled test is neither positive nor negative.

Confirmatory Drug Test: A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or metabolite.

Confirmatory Validity Test: A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

Covered Employee Under FTA Authority: An employee who performs a safety-sensitive function including an applicant or transferee who is being considered for hire into a safety-sensitive function (See Attachment A for a list of covered employees).

Designated Employer Representative (DER): An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other

communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655.

Department of Transportation (DOT): Department of the federal government which includes the Federal Transit Administration, Federal Railroad Administration, Federal Aviation Administration, Federal Motor Carriers' Safety Administration, Pipeline & Hazardous Materials Safety Administration, United States Coast Guard, and the Office of the Secretary of Transportation.

Dilute specimen: A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

Disabling damage: Damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

Evidentiary Breath Testing Device (EBT): A Device approved by the NHTSA for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations. Approved devices are listed on the National Highway Traffic Safety Administration (NHTSA) conforming products list.

Initial Drug Test: (Screening Drug Test) The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial Specimen Validity Test: The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.

Invalid Result: The result reported by an Department of Health & Human Services (HHS)-certified laboratory in accordance with the criteria established by the HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted results cannot be established for a specific drug or specimen validity test.

Laboratory: Any U.S. laboratory certified by HHS under the National Laboratory Certification program as meeting standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

Limit of Detection (LOD): The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

Limit of Quantitation: For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.

Medical Review Officer (MRO): A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

Negative Dilute: A drug test result which is negative for the five drug/drug metabolites but has a specific gravity value lower than expected for human urine.

Negative result: The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

Non-negative test result: A urine specimen that is reported as adulterated, substitute, invalid, or positive for drug/drug metabolites.

Oxidizing Adulterant: A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or metabolites, or affects the reagents in either the initial or confirmatory drug test.

Performing (a safety-sensitive function): A covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Positive result: The result reported by an HHS- Certified laboratory when a specimen contains a drug or drug metabolite equal or greater to the cutoff concentrations.

Prohibited drug: Identified as marijuana, cocaine, opioids, amphetamines (including ecstasy), or phencyclidine at levels above the minimum thresholds specified in 49 CFR Part 40, as amended.

Reconfirmed: The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

Rejected for Testing: The result reported by an HHS- Certified laboratory when no tests are performed for a specimen because of a fatal flaw or a correctable flaw that has not been corrected.

Revenue Service Vehicles: All transit vehicles that are used for passenger transportation service.

Safety-sensitive functions: Employee duties identified as:

a. The operation of a transit revenue service vehicle even when the vehicle is not in revenue service.

- b. The operation of a non-revenue service vehicle by an employee when the operation of such a vehicle requires the driver to hold a Commercial Drivers License (CDL).
- c. Maintaining a revenue service vehicle or equipment used in revenue service.
- d. Controlling the movement of a revenue service vehicle and
- e. Carrying a firearm for security purposes.

Split Specimen Collection: A collection in which the urine collected is divided into two separate bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

Substance Abuse Professional (SAP): A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed marriage and family therapist, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse (ICRC) or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC)) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

Substituted specimen: A urine specimen with creatinine and specific gravity values that are so diminished that they are not consistent with normal human urine.

Test Refusal: The following are considered a refusal to test if the employee:

- a. Fails to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer
- b. Fails to remain at the testing site until the testing process is complete
- c. Fails to attempt to provide a urine or breath specimen for any drug or alcohol test required by Part 40 or DOT agency regulations
- d. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of your provision of a specimen
- e. Fails to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
- f. Fails or declines to take a second test the employer or collector has directed you to take
- g. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the "shy bladder" or "shy lung" procedures
- h. Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process)
- i. If the MRO reports that there is verified adulterated or substituted test result
- j. Failure or refusal to sign Step 2 of the alcohol testing form
- k. Failure to follow the observer's instructions during an observed collection including instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
- l. Possess or wear a prosthetic or other device that could be used to interfere with the

collection process

m. Admit to the collector or MRO that you adulterated or substituted the specimen.

Verified negative test: A drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services (HHS).

Verified positive test: A drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use above the minimum cutoff levels specified in 49 CFR Part 40 as revised.

Validity testing: The evaluation of the specimen to determine if it is consistent with normal human urine. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

5. EDUCATION AND TRAINING

5.1. Every covered employee will have access to a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR Parts 655 and 40, as amended. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate prohibited drug use.

5.2. All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

6. PROHIBITED SUBSTANCES

6.1. Prohibited substances addressed by this policy include the following.

a. Illegally Used Controlled Substance or Drugs Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines (including methamphetamine and ecstasy), opioids (including heroin), phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of

hemp related products, which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy

Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all employees covered under FTA Authority be tested for marijuana, cocaine, amphetamines (including methamphetamine and ecstasy), opioids (including heroin), and phencyclidine as described in Section 10 of this policy. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty.

b. Legal Drugs: The appropriate use of legally prescribed drugs and nonprescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to a Marin Airporter supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.

c. Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited. An alcohol test can be performed on a covered employee under 49 CFR Part 655 just before, during, or just after the performance of safety-sensitive job functions.

7. PROHIBITED CONDUCT

7.1. All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR PART 40, as amended.

7.2. Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty.

7.3. The Transit Department shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol.

7.4. Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater regardless of when the alcohol was consumed.

7.5. No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.

7.6. No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

7.7. Marin Airporter under its own authority also prohibits the consumption of alcohol all

times employee is on duty, or anytime the employee is in uniform.

7.8. Consistent with the Drug-free Workplace Act of 1988, all Marin Airporter employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including transit system premises and transit vehicles.

8. DRUG STATUTE CONVICTION

Consistent with the Drug Free Workplace Act of 1998, all employees are required to notify the Marin Airporter management of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action as defined in Section 18.10. of this policy.

9. TESTING REQUIREMENTS

9.1. Analytical urine drug testing and breath testing for alcohol will be conducted using the testing methodologies and thresholds defined in 49CFR part 40 as amended. All employees covered under FTA authority shall be subject to testing prior to performing safety-sensitive duty, for reasonable suspicion, following an accident, and random as defined in Section 12, 13, 14, and 15 of this policy, and return to duty/follow-up.

9.2. A drug test can be performed any time a covered employee is on duty. A reasonable suspicion and random alcohol test can be performed just before, during, or after the performance of a safety-sensitive job function.

9.3. All employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with Marin Airporter. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in Section 18 of this policy.

10. DRUG TESTING PROCEDURES

10.1. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

10.2. The drugs that will be tested for include marijuana, cocaine, opioids (including heroin), amphetamines (including methamphetamine and ecstasy), and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part

40, as amended. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.

10.3. The test results from the HHS certified laboratory will be reported to a Medical Review Officer. A Medical Review Officer (MRO) is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the Marin Airporter Drug and Alcohol Program Manager (DAPM). If a legitimate explanation is found, the MRO will report the test result as negative to the DAPM.

10.4. If the test is invalid without a medical explanation, a retest will be conducted under direct observation. Employees do not have access to a test of their split specimen following an invalid result.

10.5. Any covered employee who questions the results of a required drug test under paragraphs 13 through 17 of this policy may request that the split sample be tested. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. Marin Airporter will ensure that the cost for the split specimen are covered in order for a timely analysis of the sample, however Marin Airporter will seek reimbursement for the split sample test from the employee.

10.6. If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate or is invalid, the MRO will declare the original test to be canceled. If the split specimen is not available to be analyzed or is invalid the MRO will direct Marin Airporter to immediately retest the employee under direct observation.

10.7. The split specimen will be stored at the initial laboratory until the analysis of the

primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary is positive, the split will be retained for testing if so requested by the employee through the Medical Review Officer. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year.

10.8. Observed collections

Consistent with 49 CFR part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:

a. The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to Marin Transit that there was not an adequate medical explanation for the result;

- The MRO reports to Marin Airporter that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed;
- The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen to you as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1)).
- The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
- The temperature on the original specimen was out of range;
- Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with.
- All follow-up-tests; or
- All return-to-duty tests

11. ALCOHOL TESTING PROCEDURES

11.1. Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). Alcohol screening tests may be performed using a non-evidential testing device which is also approved by NHSTA. if the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted no sooner than fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

11.2. An employee who has a confirmed alcohol concentration of 0.04 or greater will be

considered a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in Section 18. of this policy. **Even though an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive, the employee shall still be removed from duty for at least eight hours or for the duration of the work day whichever is longer and will be subject to the consequences described in Section 18 of this policy.** An alcohol concentration of less than 0.02 will be considered a negative test.

11.3. Marin Airporter affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.

11.4. The alcohol testing form (ATF) required by 49 CFR Part 40 as amended, shall be used for all FTA required testing. Failure of an employee to sign step 2 of the ATF will be considered a refusal to submit to testing.

12. PRE-EMPLOYMENT TESTING

12.1. All applicants for covered transportation positions shall undergo urine drug testing prior to performance of a safety-sensitive function.

a. All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug test. An applicant will not be allowed to perform safety-sensitive functions unless the applicant takes a drug test with verified negative results.

b. An employee shall not be placed, transferred or promoted into a position covered under FTA or company authority until the employee takes a drug test with verified negative results.

c. If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded and the applicant will be referred to a SAP. Before being considered for future employment the applicant must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.

d. When an employee being placed, transferred, or promoted from a non-covered position to a position covered under FTA or company authority submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with Section 18 herein.

e. If a pre-employment test is canceled, Marin Airporter will require the applicant to take and pass another pre-employment drug test.

f. In instances where a FTA covered employee is on extended leave for a period of 90 consecutive days or more regardless of reason, and is not in the random testing pool the employee will be required to take a pre-employment drug test under 49 CFR Part 655 and have negative test results prior to the conduct of safety-sensitive job functions.

g. Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.

h. Applicants are required (even if ultimately not hired) to provide Marin Airporter with

signed written releases requesting DOT drug and alcohol records from all previous, DOT-covered safety-sensitive work, employers that the applicant has worked for within the last two years. Failure to do so will result in the employment offer being rescinded. Marin Airporter is required to ask all applicants (even if ultimately not hired) if they have tested positive or refused to test on a pre-employment test for a DOT covered employer within the last two years. If the applicant has tested positive or refused to test on a pre-employment test for a DOT covered employer, the applicant must provide Marin Airporter proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G.

13. REASONABLE SUSPICION TESTING

All Marin Airporter covered employees will be subject to a reasonable suspicion drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by one or more supervisors who are trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. However, under Marin Airporter's authority, a reasonable suspicion drug/alcohol test may be performed any time the covered employee is on duty. If the employee is not reporting for, performing or has just performed a safety-sensitive job function the reasonable suspicion alcohol testing will be done on non-DOT forms with no DOT consequences (no SAP referral) for non-negative results.

Marin Airporter shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or others into a situation which might endanger the physical safety of those present. The employee shall be placed on administrative leave pending disciplinary action described in Section 18 of this policy. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in Section 18 of this policy.

13.3. A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation. This written record shall be submitted to the Marin Airporter management. When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol or other substances to a supervisor in his/her chain of command, the employee shall be referred for assessment and treatment consistent with Section 18 of this policy. Marin Airporter shall place the employee on administrative leave in accordance with the provisions set forth under Section 18 of this policy. Testing in this circumstance would be performed under the direct authority of the Marin Airporter. Since the employee self-referred to management,

testing under this circumstance would not be considered a violation of this policy or a positive test result under Federal authority. However, self-referral does not exempt the covered employee from testing under Federal authority as specified in Sections 13 through 15 of this policy or the associated consequences as specified in Section 18.

14. POST ACCIDENT TESTING

14.1. All employees covered under FTA authority will be required to undergo urine and breath testing if they are involved in an accident with a public transportation vehicle regardless of whether or not the vehicle is in revenue service that results in a fatality. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance cannot be completely discounted as a contributing factor to the accident.

14.2. In addition, a post-accident test will be conducted if an accident results in injuries requiring immediate transportation to a medical treatment facility; or one or more vehicles incurs disabling damage, unless the operators performance can be completely discounted as a contributing factor to the accident.

- a. As soon as practicable following an accident, as defined in this policy, the supervisor investigating the accident will notify the employee operating the vehicle and all other covered employees whose performance could have contributed to the accident of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.
- b. The appropriate supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours of the accident for alcohol, and no longer than 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the Supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.
- c. Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test.
- d. An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.
- e. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.
- f. In the rare event that Marin Airporter is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), Marin Airporter may use drug and alcohol post-accident test results administered by local law enforcement officials in lieu of the FTA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

15.RANDOM TESTING

15.1. All covered employees will be subjected to random, unannounced testing. Employees covered under FTA authority will be selected from a pool of DOT-covered safety-sensitive employees. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of employees.

15.2. The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year, day of the week and hours of the day.

15.3. The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations for those safety-sensitive employees subject to random testing by Federal regulations. **The current random testing rate for drugs established by FTA equals twenty-five percent of the number of covered employees in the pool and the random testing rate for alcohol established by FTA equals ten percent of the number of covered employees in the pool.**

15.4. Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection.

15.5. Covered employees that fall under the Federal Transit Administration regulations will be included in one random pool.

15.6. Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can be performed just before, during, or just after the performance of a safety sensitive duty.

15.7. Employees are required to proceed immediately to the collection site upon notification of their random selection.

16. RETURN TO DUTY

All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return-to-Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return-to-Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug and alcohol-free and there are no undo

concerns for public safety.

17. FOLLOW UP TESTING

Covered employees will be required to undergo frequent, unannounced drug and/or alcohol testing following their return-to-duty. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing.

18. RESULT OF DRUG/ALCOHOL TEST

18.1 Any covered employee that has a verified positive drug or alcohol test will be removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP) for assessment. No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the SAP and the employer.

18.2. Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.

18.3. A positive drug and/or alcohol test will also result in disciplinary action as specified herein.

a. After receiving notice of a verified positive drug test result, a confirmed alcohol test result, or a test refusal, the Marin Airporter Drug and Alcohol Program Manager will contact the employee's supervisor to have the employee cease performing any safety-sensitive function.

b. The employee shall be referred to a Substance Abuse Professional for an assessment. The SAP will evaluate each employee to determine what assistance the employee needs in resolving problems associated with prohibited drug use or alcohol misuse.

18.4. Refusal to submit to a drug/alcohol test shall be considered a positive test result and a direct act of insubordination and shall result in termination and referral to an SAP. A test refusal includes the following circumstances:

- a. Fails to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer
- b. Fails to remain at the testing site until the testing process is complete
- c. Fails to attempt to provide a urine or breath specimen for any drug or alcohol test required by Part 40 or DOT agency regulations

- d. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of your provision of a specimen.
- e. Fails to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
- f. Fails or declines to take a second test the employer or collector has directed you to take.
- g. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the "shy bladder" or "shy lung" procedures
- h. Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process)
- i. If the MRO reports that there is verified adulterated or substituted test result
- j. Failure or refusal to sign Step 2 of the alcohol testing form
- k. Failure to follow the observer's instructions during an observed collection including instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
- l. Possess or wear a prosthetic or other device that could be used to interfere with the collection process
- m. Admit to the collector or MRO that you adulterated or substituted the specimen.

18.5. For the first instance of a verified positive test from a sample submitted as the result of a random, drug/alcohol test (> 0.04 BAC), disciplinary action against the employee shall include:

- a. Mandatory referral to Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a return to work agreement;
- b. Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from Marin Airporter employment.
- c. Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as defined in Section 17 of this policy.
- d. Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination.
- e. A periodic unannounced follow-up drug/alcohol test which results in a verified positive shall result in termination from Marin Airporter employment.

18.6. The second instance of a verified positive drug or alcohol (> 0.04 BAC) test result including a sample submitted under the random, reasonable suspicion, return-to-duty, or follow-up drug/alcohol test provisions herein shall result in termination from Marin Airporter employment.

18.7. A verified positive post-accident, or reasonable suspicion drug and/or alcohol (> 0.04) test shall result in termination.

18.8. An alcohol test result of > or equal to 0.02 to < or equal to 0.039 BAC shall result

in the removal of the employee from duty for eight hours or the remainder of the work day whichever is longer. The employee will not be allowed to return to safety-sensitive duty for his/her next shift until he/she submits to an alcohol test with a result of less than 0.02 BAC. If the employee has an alcohol test result of \geq 0.02 to \leq 0.039 two or more times within a six month period, the employee will be removed from duty and referred for assessment and treatment consistent with Section 18.9-18.10 of this policy.

18.9. The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider. The employee will be permitted to take accrued sick leave or administrative leave to participate in the prescribed treatment program. If the employee has insufficient accrued leave, the employee shall be placed on leave without pay until the employee has successfully completed the required treatment program and has been released to return-to-duty. Any leave taken, either paid or unpaid, shall be considered leave taken under the Family and Medical Leave Act.

18.10. In the instance of a self-referral or a management referral, disciplinary action against the employee shall include:

- a. Mandatory referral for an assessment by an employer approved substance abuse counselor or EAP (employee assistance program), formulation of a treatment plan, and execution of a return to work agreement;
- b. Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from Marin Airports employment.
- c. Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; the employee is cooperating with his/her recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as defined in Section 17 of this policy.
- d. Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination. All tests conducted as part of the return to work agreement will be conducted under company authority and will be performed using non-DOT testing forms.
- e. A self-referral or management referral to the employer's approved substance abuse counselor or EAP that was not precipitated by a positive test result does not constitute a violation of the Federal regulations and will not be considered as a positive test result in relation to the progressive discipline defined in Section 18.4-18.5 of this policy.
- f. Periodic unannounced follow-up drug/alcohol test conducted as a result of a self-referral or management referral which results in a verified positive shall be considered a positive test result in relation to the progressive discipline defined in Section 18.4-18.5 of this policy.
- g. A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment with Marin Airports.
- h. A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.

18.11. Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in termination.

19. GRIEVANCE AND APPEAL

The consequences specified by 49 CFR Part 40.149 (c) for a positive test or test refusal is not subject to arbitration.

20. PROPER APPLICATION OF POLICY

Marin Airporter is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

21. INFORMATION DISCLOSURE

21.1. Drug/alcohol testing records shall be maintained by the Marin Airporter Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.

21.2. The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP follow-up testing plans.

21.3. Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, and other transportation system management personnel on a need to know basis.

21.4. Records will be released to a subsequent employer only upon receipt of a written request from the employee.

21.5. Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the preceding.

21.6. Records will be released to the National Transportation Safety Board during an accident investigation.

21.7. Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.

21.8. Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.

21.9. Records will be released if requested by a Federal, state or local safety agency with regulatory authority over Marin Airporter or the employee.

21.10. If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken.

21.11. In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

21.12. Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following Marin Airporter individuals:

Drug and Alcohol Program Manager (Donald Ambrose)

Safety Officer (DER) (Donald Ambrose)

President (DER) (Randy Kokke)

ATTACHMENT L SAFETY PROGRAM

Pursuant to Section 104 B. of this Contract, the CONTRACTOR will provide this plan within 45 days of Contract approval.

ATTACHMENT M EMERGENCY PREPAREDNESS PLAN

Pursuant to Section 104 of this Contract, the CONTRACTOR will provide this plan within 90 days of Contract approval.

