



SOLANO COUNTY TRANSIT

INVITATION FOR SEALED BID

IFB# 09-21-11F

FOR

Diesel and Gasoline Fuel Purchase

BID OPENING: 11/1/2011 AT 2:00 P.M. Pacific Time

**BIDS WILL NOT BE ACCEPTED AFTER DATE AND
TIME INDICATED ABOVE
NO EXCEPTIONS**

**FAXED QUOTATIONS ARE NOT ACCEPTABLE UNLESS SO INDICATED IN THE
NOTICE TO BIDDERS**

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NOTICE TO BIDDERS

NOTICE IS HEREBY GIVEN THAT SEALED BIDS will be received at the office of the Director of Administrative Services, Second Floor, Vallejo Transit Center, 311 Sacramento Street, Vallejo, California, during the business hours of 8:00 AM through 5:00 PM, Monday through Friday, holidays excepted, (on day of bid, packets may be hand delivered to the 311 Sacramento Street Information window) until the time of 2:00 p.m., PST on November 1, 2011, at which time they will be publicly opened and read aloud in the Vallejo Transit Center Conference Room for

Supply and Delivery of Diesel and Gasoline Fuel

This IFB will enable SolTrans to solicit interested parties to supply CARB Ultra Low Sulfur Red Dye#2 Diesel and Unleaded Reg 87 10% Ethanol gasoline. The City of Vallejo will also be participating in this solicitation for diesel fuel supply and delivery to the Baylink Ferry Maintenance Facility. Contractor will be responsible for completing the Scope of Work as further defined in the appropriate section of the Bid Documents.

All bids shall be sealed and the envelope or package marked as follows: “[*Bidder Name*] IFB# 09-21-11F- Diesel and Gasoline Fuel Purchase.”

Specifications shall not be altered without the written approval of Solano County Transit. Suppliers wishing to examine the fueling facilities may request a site visit by calling 707-648-5288.

Solano County Transit affirms that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation.

Bids are required for the entire work described herein.

Bidders are advised that this project is subject to all federal, state and local nondiscrimination laws.

Users of documents posted on the internet in electronic form are cautioned that Solano County Transit does not assume any liability or responsibility based on these electronic files or for any defective or incomplete copying, excerpting, scanning, faxing or downloading of the contract documents. Bid documents are located online at <http://www.sta.ca.gov/Content/10038/SolTrans.html>. **In order to receive addenda, potential bidders and interested subcontractors must register with SolTrans by using an online registration form as further described in the Special Provisions of the IFB, Section 2, or call 707.648.5288 to be placed on the list to receive addenda or if you cannot access the online version of the solicitation.**

No bid will be considered unless it is made on the proposal forms included in these Contract Documents.

Solano County Transit
Invitation for Bid
Exhibit A – Notice to Bidders

ALL QUESTIONS REGARDING THIS NOTICE (SUBMITTING A QUESTION DOES NOT ALTER THE TERMS AND CONDITIONS OF THIS SOLICITATION) MUST BE IN WRITING AND DIRECTED TO SOLTRANS AT:

FAX: 707.648.4260 ATTN: Greg Anderson
EMAIL: greg@soltransride.com

Greg Anderson
Director of Administrative Services

Dated: 10/11/2011

Solano County Transit
IFB 09-21-11F Fuel

SOLTRANS GENERAL INSTRUCTIONS AND CONDITIONS

1. DEFINITIONS

- a) "Bid" means an offer, made in response to a solicitation to perform a contract for work and labor or to supply goods at a specified price, whether or not it is considered a "sealed bid" or results in award of a contract to a single or sole source.
- b) "Bidder" means a supplier, contractor, or consultant who submits a bid to Solano County Transit in response to a solicitation.
- c) "Solicitation" means the process, by whatever name known or in whatever format used, of notifying prospective bidders that SolTrans wishes to receive bids for furnishing goods or services.
- d) "Supplier" means a business entity, bidder, offeror, vendor or contractor.
- e) "SolTrans" or "Buyer" means Solano County Transit, and vice versa.

2. PREPARATION OF BIDS:

- a) All prices and notations must be printed in ink or typewritten. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed in ink by person signing bid. Unless a total bid price is specified, all bids must indicate unit prices for each separate line item and extend price totals, or if no price is shown it shall be considered a "no bid" and the supplier may be determined non-responsive. Unit prices may not be more than four (4) places to the right of the decimal point. For example, a unit price of \$.56726 each would exceed this limitation. Unit prices which exceed this limitation will automatically be truncated to the fourth decimal place for both evaluation and award purposes. Using the example just cited, the "6" at the end of the unit price would be truncated (i.e., dropped off) leaving a unit price of \$.5672 each. In case of extension error, the unit price governs. In case of discrepancy between the unit price and the extension set forth for the item, the unit price shall prevail; however, if the amount set forth as a unit price is ambiguous, unintelligible or uncertain for any cause, or is omitted, the amount set forth in the "Extension" column shall be divided by the quantity for the item and the price thus obtained shall be the unit price. In case of discrepancy between the totals shown on the bid and the actual sum of the item totals, the actual sum of all item totals shall prevail.
- b) Use of a brand name as a specification is not intended to restrict competition. Where practical, the salient characteristics will have been listed along with the brand name in the solicitation specification. A Bidder may, at its option, use any equipment, material, article, or process which, in the judgment of SolTrans, is equal to that designated. To do so a Bidder shall furnish, at its own expense, all test results, technical data, manuals, and background information required by SolTrans in making the determination as to whether the proposed equipment, material or article or process, in the judgment of SolTrans, is equal to that designated. SolTrans shall be the sole judge as to the comparative quality and suitability of alternative equipment, articles, material, or process, and its decision shall be final.
- c) Quote on each item separately. Prices should be stated in units specified herein.
- d) Time of delivery is a part of the consideration and must be stated in definite terms and must be adhered to. If time varies on different items, the bidder shall so state in the

column provided opposite each item. Time, if stated in a number of days, shall mean "working days." All times for delivery will be stated from notice to proceed from SolTrans.

3. SUBMISSION OF BIDS:

- (a) Informal quotes of less than \$25,000 may be submitted on this form via mail, scanned document attached to email, or fax.
- (b) Formal Bids (more than \$25,000) must be submitted to the Director of Administrative Services' Office, 2nd Floor, Vallejo Transit Center, 311 Sacramento Street, Vallejo, CA 94590 or in accordance with the direction provided in the solicitation. On the day of bid, bids may be accepted at the 311 Sacramento service window, located directly in front of the Vallejo Transit Center rotunda at 311 Sacramento Street, unless otherwise indicated in the solicitation.
- (c) Formal Bids must be hand delivered or sent via U.S. Mail or common carrier unless another method (e.g., facsimile) is specifically authorized in the solicitation.
- (d) Where a "sealed" bid is required, each bid shall be separately sealed inside an envelope and must be signed and received by the closing time and date specified, and on the forms furnished by SolTrans to be considered for award. SolTrans reserves the right to consider authorized facsimile bids as properly "sealed" if received prior to the closing time specified, provided that a signature is shown on the facsimile.
- (e) The bidder is solely responsible for ensuring that the full bid is received by SolTrans in accordance with the solicitation requirements, prior to the date and time specified in the solicitation, and at the place specified. SolTrans shall not be responsible for any delays in mail or by common carriers or by transmission errors or delays or misdelivery.
- (f) If facsimile transmission of the bid is acceptable, and the bidder chooses to transmit their bid via facsimile, the bidder understands and agrees that SolTrans will consider only those portions of the bid received prior to the closing time specified; any pages received after that time will not be considered.
- (g) If no alternate time for receipt of bids is specified in the solicitation, the bid shall be due by 2:00 p.m. Pacific Standard Time (PST).
- (h) Generally, sealed bids will be opened and read on the due date unless another date and time is specified in the solicitation or any addendum thereto.
- (i) Bids received after the time stated will be considered non-responsive.
- (j) All bids must show the full name of Firm Bidding. All bids must be signed in ink by a responsible officer or employee of the firm and title of the officer or employee must be shown, unless bid or quote by fax or other electronic communication is otherwise allowed. In such cases, the original quote signed in ink may be required to be sent in following original submission. Obligations assumed by the signature must be fulfilled.
- (k) Supplier shall carefully review all documents referenced and made a part of this solicitation to ensure that all information required to properly respond to the solicitation has been received or made available and all requirements are priced in the bid. Failure to examine any document, drawing, specification, or instruction will be at the supplier's sole risk.

4. AWARD:

A written purchase order mailed or otherwise furnished to the lowest responsive and responsible bidder who submits a responsive bid meeting solicitation requirements which is most advantageous to SolTrans within the time for acceptance specified results in a binding contract without further action by either party. The contract shall be interpreted, construed and given effect in all respects according to the laws of the State of California.

5. PROTEST:

Protests dealing with restrictive specifications or alleged improprieties in solicitation must be filed no later than ten (10) working days prior to bid opening date. Any other protest must be filed no later than five (3) working days after issuance of Notification of Intent to Award (if the awarding authority follows staff recommendation) or Notification of Award (if contract is not awarded in accordance with the Notification of Intent to award).

Protests shall be in writing and addressed to the Executive Director, 311 Sacramento St., Vallejo, CA 94590, or submitted via scanned letter and emailed to jim@soltransride.com. Any such correspondence should be clearly marked (PROTEST). The protest must identify the protestor, contain a statement officially declaring a protest, describe the reasons for the protest, and provide any supporting documentation. Additional materials in support of the initial protest will only be considered if filed within the time limit specified above. The protest shall indicate the ruling or relief desired from SolTrans.

Materials submitted by a protester will not be withheld from any interested party, except to the extent that the withholding of information is permitted or required by law or regulation. If the protest contains proprietary material, a statement advising of this fact may be affixed to the front page of the protest document and the alleged proprietary information must be so identified wherever it appears.

The Executive Director shall respond to the protestor within five (5) working days of receiving the protest. A conference on the merits of the protest may be held with the protestor.

Any additional information required by SolTrans from the protester shall be submitted as expeditiously as possible, but no later than three (3) days after receipt of such request.

The Executive Director shall notify the protestor of its decision no later than ten (10) days following receipt of all relevant information. This notice shall contain any other appeals available to the protestor under the SolTrans Purchasing Policy.

6. ALTERATION OR VARIATION OF TERMS:

It is mutually understood and agreed that no alteration or variation of the terms of this bid shall be valid unless made or confirmed in writing and signed by the parties thereto, and that no oral understandings or agreements not incorporated herein, and no alterations or variations of the terms hereof unless made or confirmed in writing between the parties thereto, shall be binding on any of the parties hereto.

7. ASSIGNABILITY:

A contract is not assignable by bidder either in whole or in part, nor shall the bidder subcontract any obligations hereunder without SolTrans' prior written approval. If the solicitation documents so indicates, quantities and prices bid may be made available to other government entities with the exception of proven added costs of delivery for alternate delivery locations.

8. COMPLIANCE WITH STATUTE:

Bidder hereby warrants that all Federal and State statutes and regulations or local ordinances will be complied with in connection with the sale and delivery of the property furnished.

9. COVENANT AGAINST GRATUITIES:

The bidder shall warrant that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the bidder, or any agent or representative of the bidder, or any officer or employee of SolTrans with a view toward securing the performance of the contracts. For breach or violation of this warranty, SolTrans shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by SolTrans in procuring on the open market any items, which the bidder agreed to supply, shall be borne and paid for by the bidder. The rights and remedies of SolTrans provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under contract.

10. SAMPLES:

Samples of items, when required, must be furnished free of expense to SolTrans and if not destroyed by tests may, upon request made at the time the sample is furnished, be returned at the bidder's expense.

11. RIGHTS AND REMEDIES OF SOLTRANS FOR DEFAULT:

- a) In the event any items furnished by the vendor in the performance of the contract or purchase order should fail to conform to the specifications, or the sample submitted by the vendor with his bid, SolTrans may reject the same, and it shall thereupon become the duty of the vendor to reclaim and remove the same forthwith, without expense to SolTrans, and immediately to replace all such rejected items with others conforming to such specifications or samples; if the vendor should fail, neglect or refuse to do so, SolTrans shall have the right to purchase in the open market, a corresponding quantity of any such items and to deduct from any monies due or that may thereafter become due to the vendor the difference between the prices named in the contract or purchase order and the actual cost thereof to SolTrans. In the event the vendor shall fail to make prompt delivery as specified of any item, the same conditions as to the rights of SolTrans to purchase in the open market and to reimbursement set forth above shall apply, except when delivery is delayed by fire, strike, freight embargo, or Act of God or the government.
- b) Cost of inspection of deliveries or offers for delivery, which do not meet specifications, will be for the account of the vendor.
- c) The rights and remedies of SolTrans provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under contract.

12. BONDS:

All proposals or bids offered, unless the purchasing agent waives the bond requirements prior to bid opening, shall be accompanied by a bank cashier's check, or by a check certified by a responsible bank, payable to SolTrans, in an amount as specified in the notice inviting bids, or by a bidder's bond for the amount and so payable, signed by the bidder and any one or more sureties authorized to transact surety business in the state of California, acceptable to the purchasing agent and SolTrans attorney. No proposal shall be considered unless accompanied by such check or bond. SolTrans reserves the right to require a supply contract bond or faithful performance bond from the successful bidder in an amount not to exceed the amount of the contract. This requirement will be stated on the face of the solicitation. In the event a surety bond is required by SolTrans that has not been expressly required by the specification,

SolTrans will reimburse the successful bidder, as an addition to the purchase price, in an amount not exceeding the standard premium on such bond.

13. CAL/OSHA COMPLIANCE:

All items to fully comply with aspects of the Department of Labor Occupational Safety and Health Administration Act, and CAL/OSHA Regulations and Standards.

14. PUBLIC RECORD:

All information received from Bidders by SolTrans shall be considered a public record under the California Public Records Act and will be subject to disclosure upon receipt of a request for disclosure under the Act. If Bidder believes it is submitting information that is a trade secret or otherwise exempt from disclosure under the Act; that information shall be set apart and clearly marked "Confidential Information" when it is provided to SolTrans. SolTrans shall give notice to Bidder of any request for the disclosure of such Confidential Information and prior to disclosure give Bidder an opportunity to take any legal or protective action Bidder deems appropriate. If the Bidder fails to take any legal or protective action within the time period SolTrans is required to permit inspection or copying under the Act, the Bidder's failure to act shall constitute a complete waiver by Bidder of any rights regarding the Confidential Information, and such information will be disclosed by SolTrans pursuant to applicable procedures required by the Act. Furthermore, SolTrans shall not be in breach of any agreement for its disclosure of the Confidential Information. In the event the Bidder takes any legal or protective action and directs SolTrans not to disclose the Confidential Information, then the Bidder shall indemnify SolTrans against any losses, including reasonable attorney fees and costs, sustained arising from the non-disclosure of the Confidential Information. SolTrans, in its sole discretion may tender the defense of SolTrans to Bidder in any legal action or challenge related to the non-disclosure.

15. VENDOR NOTIFICATION:

If a supplier received this solicitation through some means other than being notified directly by SolTrans, it is the responsibility of the supplier to advise the buyer of its intention to provide a bid so that addenda or other correspondence related to the solicitation will be sent to the supplier.

16. ADDENDA:

If the solicitation is revised by an addendum, supplier shall submit the original solicitation along with any addenda required to be submitted by the buyer. Price(s) offered shall reflect all addenda issued by SolTrans. Failure to do so will permit SolTrans to find the bid non-responsive.

17. EVALUATION OF BIDS:

- a) If best value award criteria are not present elsewhere in the solicitation documents, the contract will be awarded to the lowest responsive and responsible bidder meeting specification. Where more than one line item is specified in the solicitation, and in situations where it is practicable to do so, SolTrans reserves the right to award the contract on the basis of advantages and disadvantage to SolTrans that might result from making more than one award (multiple awards) based on line item bids. It is assumed, for the purpose of evaluating bids, that \$1,000 would be the administrative cost to SolTrans for issuing and administering each contract awarded under this solicitation, and individual awards will be for the items or combinations of items that result in the lowest aggregate cost to SolTrans, including the assumed administrative cost.
- b) Unless otherwise specified in the solicitation, SolTrans may accept any item or group of items of any bid unless the bidder expressly objects and conditions its response on receiving all items for which it provided a bid. In the event

that the bidder so objects, SolTrans may consider the bidder's objection and evaluate whether the award on such basis will result in the lowest price to SolTrans or may determine in its sole discretion that such an objection is non-responsive and renders the bidder ineligible for award.

- c) Other criteria to be used in evaluating bids may be identified elsewhere in the solicitation.

18. JOINT BIDS:

A joint bid submitted by two or more bidders participating jointly in one bid may be submitted and each participating bidder must sign the joint bid. If a contract is awarded to bidders who furnished a joint bid, it shall be deemed one indivisible contract. Each such joint contractor will be jointly and severally liable for the performance of the entire contract, and the joint contractors must designate, in writing, one individual having authority to represent them in all matters relating to the contract. SolTrans assumes no responsibility or obligation for the division of orders or purchases among joint contractors.

19. SAMPLES TO DETERMINE RESPONSIVENESS TO TECHNICAL REQUIREMENTS FOR THE PURPOSES OF AWARD:

- a) Samples of items, when required by SolTrans, must be furnished free of expense to SolTrans, unless otherwise provided.
- b) Unless expressly set forth in the solicitation, the sample or samples furnished must be identical in all respects to the product or products being offered to SolTrans.
- c) Bidders offering products of a different manufacturer and model number than those specified in the solicitation may be required to submit samples for inspection and specification compliance testing in order for SolTrans to determine if the item offered is equivalent to and meets the minimum standards of quality acceptable to SolTrans as indicated by the manufacturer and model number specified in the solicitation.
- d) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at bidder's expense.

20. ALTERNATE BIDS:

Bidders are encouraged to consider SolTrans's business needs and to recommend alternate solutions to SolTrans's requirements if it will result in improvements, reduce the price, provide economical ordering quantities or deliveries, more economical packaging, bulk handling, changes to products that will offer additional features, finishes, etc., provided that the alternative solution will not impair any essential characteristics of form, fit or function, such as service life, reliability, ease of maintenance or interchangeability. Any such recommendations must be made during the solicitation process and submitted to SolTrans for consideration at least 5 days prior to bid opening. Alternate Bids submitted at Bid Opening cannot be considered.

21. CASH DISCOUNTS FOR PROMPT PAYMENT:

SolTrans encourages bidders to offer cash discounts for prompt payment, however, unless provided elsewhere in the solicitation, cash discounts offered by bidders for the prompt payment of invoices will not be considered in evaluating offers to determine the successful bidder for award of any resulting contract.

22. SPECIFICATION CONCERNS:

- a) In the event a supplier believes that SolTrans's solicitation is unfairly restrictive, ambiguous, contains conflicting provisions or mistakes or in the supplier's experience any resulting contract would be commercially impractical to perform, the matter should be promptly brought to the attention of the buyer identified in the solicitation, either by telephone, letter or visit, immediately upon receipt of the solicitation, in order that the matter may be fully

considered and appropriate action taken by SolTrans prior to the closing time set to receive bids.

- b) Failure by any supplier to raise any concern relating to the solicitation requirements within at least five (5) working days prior to the bid close date, will be deemed a waiver of the supplier’s right to protest any decision for contract award relating to the solicitation’s requirements.

23. VALIDITY OF BID:

Unless specified elsewhere in the solicitation, bidder’s bid shall be valid for forty-five (45) days following the date the response is due.

24. COST OR PRICING DATA:

- a) SolTrans may require the bidder to furnish cost or pricing data of the kind and in the form that SolTrans may determine is necessary and appropriate to assess the fairness and reasonableness of a bidder’s proposed price, as part of the bid or during evaluation of a bid.
- b) By submission of a bid, the bidder agrees that bidder’s books, records, documents and other supporting data relating to the subject(s) of this solicitation shall be made available to SolTrans or its authorized representatives, for inspection and audit as required or in connection with any price negotiations. SolTrans reserves the right to copy relevant portions of bidder’s books, records, documents and other supporting data as it deems necessary.
- c) All cost or pricing data furnished to SolTrans shall be current, accurate and complete as of the time of submittal.
- d) Failure to provide such cost or pricing data upon request may be grounds for determining the bidder is non-responsive and ineligible for award.

25. MISTAKE IN BID:

If prior to contract award, a bidder discovers a mistake in their bid which renders the bidder unwilling to perform under any resulting contract, the bidder must immediately notify the buyer and request to withdraw the bid. It shall be solely within SolTrans’s discretion as to whether withdrawal will be permitted. If the solicitation contemplated evaluation and award of “all or none” of the items, then any withdrawal must be for the entire bid. If the solicitation provided for evaluation and award on a line item or group basis, SolTrans may consider permitting withdrawal of specific line item(s) or group(s).

26. SOLTRANS RIGHTS:

- a) SolTrans reserves the right to modify or cancel in whole or in part its solicitation at any time prior to contract award. b) SolTrans reserves the right to reject any or all bids if SolTrans determines that a bidder’s bid was non-responsive to the solicitation requirements and to waive informalities and minor irregularities in bids received. c) SolTrans reserves the right to reject any or all bids if SolTrans determines that a bidder is not a responsible supplier. d) , SolTrans reserves the right to reject any or all bids or any items thereof; or to waive any informality or irregularity in the bids or in the bidding procedures. e), SolTrans reserves the right to terminate this contract for cause or convenience. SolTrans will pay for all cost and profit up-to the time of the date of the notice of termination for convenience.
- b) To reduce costs to SolTrans of mailing solicitations to suppliers who do not intend to bid, suppliers may also be removed from SolTrans’s list of bidders for failure to respond to three or more solicitations. Suppliers so removed may request to be added back to the list at any time. Vendors placed in a vendor database are not guaranteed notification.

27. UNFAIR PRACTICES ACT AND OTHER LAWS:
Supplier warrants that its bid complies with the Unfair Practices Act (Business and Professions Code Section 17000 et seq.) and all applicable State and Federal laws and regulations.

28. INDEPENDENCE OF BID:
Unless supplier is furnishing a joint bid, by submitting this bid, bidder swears under penalty of perjury that it did not conspire with any other supplier to set prices in violation of anti-trust laws.

29. NON-DISCRIMINATION CLAUSE:
All contractors or firms who perform services for SolTrans must agree that it will not, because of the race, religion, creed, color, sex, national origin or ancestry of any person, or to ban or discharge any person from employment, or to discriminate against any person in compensation, or in terms, conditions or privileges of employment and that contractor will take affirmative action to insure that every applicant for employment and every employee will receive equal opportunity for employment and shall be granted equal treatment with respect to compensation, terms, conditions or other privileges of employment without regard to race, religion, creed, color, sex, national origin or ancestry.

30. PURCHASING QUESTIONS:
Should you have any questions or comments regarding this bid package, please send written questions / comments to:
Director of Administrative Services
2nd Floor
Vallejo Transit Center, CA 94590
Fax: 707.648.4691

**In order for a Bid to be responsive, Bidder must be willing to accept the following conditions:
SOLTRANS PURCHASE ORDER
TERMS AND CONDITIONS
(The following conditions are applicable to Purchase Orders issued by SolTrans)**

The following general terms and conditions are to be incorporated into and will become a part of the contractual agreement, hereafter referred to as "Contract," between Supplier/Vendor/Contractor, hereafter referred to as "Supplier," and Solano County Transit, hereafter referred to as "SolTrans."

Agreement.
“TERMS AND CONDITIONS” stated in this document, plus “TERMS AND CONDITIONS” contained on the back of the Purchase Order shall apply to this Contract between the Supplier and SolTrans. Any other terms and conditions must be in writing and agreed to by SolTrans. Upon acceptance of the Purchase Order the Supplier agrees to abide by these terms and conditions. This Contract is binding on the heirs, successors, assigns, and representatives of the Supplier.

Modifications and Amendments.
This Contract may be modified or amended upon mutual agreement between SolTrans and the Supplier by written document subject to any required City, State, or Federal approval.

Compliance with Law.
Supplier shall be subject to and comply with all Federal, State, County, and local laws and regulations applicable with respect to its performance under this Contract, including but not limited to, licensing, employment, and purchasing practices, wages, hours, and conditions of employment, and nondiscrimination, including, but not

limited to the Fair Labor Standards Act of 1938 as amended, and executive orders and rules and regulations of the President's Committee on Equal Employment Opportunity, and the California Occupational Safety and Health Act of 1973 (CAL-OSHA).

Disputes.

Disagreements between the Supplier and SolTrans concerning the meaning, requirement or performance of this Contract shall be subject to final determination in writing by SolTrans in accordance with the applicable procedures (if any) required by SolTrans, State of California, or Federal Government.

Conflicts of Interest.

Supplier, its officers, partners, associates, agents, and employees, shall not make, participate in making, or in any way attempt to use the position afforded them by this Contract to influence any governmental decision in which he or she knows or has reason to know that he or she has a financial interest under California Government Code Section 87100, et seq. or otherwise.

Indemnification.

The Supplier agrees to indemnify, defend, and hold harmless SolTrans, its officers, agents, and employees, against all claims, demands, and judgments made or recovered against SolTrans or damages to real, tangible, or personal property, including injury or death, in connection with this Contract to the extent such damage, injury, or death was caused by negligence, intentional, or willful misconduct of Supplier during the operations in connection with the performance of work or duties undertaken as a result of the acceptance of this Contract.

Choice of Law and Venue.

This Contract is made in the County of Solano and shall be governed and construed in accordance with the laws of the State of California. Any action relating to this Contract shall be instituted and prosecuted in the courts of the County of Solano, State of California.

Inspection.

Supplier's performance, place of business, and records pertaining to this Contract are subject to monitoring, inspection, review, and audit by authorized representatives of SolTrans, State of California, and Federal Government.

Records.

Supplier shall keep and make available for inspection and copying by authorized representatives of SolTrans, State of California, and federal Government, the Supplier's regular business records and such additional records pertaining to this Contract as may be required by SolTrans.

Retention of Records.

The Supplier shall retain all records pertaining to this Contract for two (2) years from the effective date on this Contract and for any further period that is required by law.

F.O.B. Point/Shipping Charges/Title.

All prices shall be quoted as F.O.B. Destination. F.O.B. Destination indicate that title to products/equipment purchased, hereunder shall pass to SolTrans at F.O.B. point designated on Purchase Order, even if freight is paid by SolTrans or prepaid by Supplier, and subject to the right of SolTrans to reject upon inspection. If freight is pre-paid and added to the invoice, all shipping, handling, and freight cost shall be shown separately and apart from the cost of products/equipment.

Payments / Invoices.

Supplier shall submit a correct and complete invoice(s) to SolTrans' "SHIP TO" address for payment. Supplier shall state its payment and discount terms on all invoices. Discount period shall begin from the date SolTrans received invoices or products/services, whichever occurs later. Unless a discount is offered, payment terms are Net 30.

Conflicting Terms.

If any conflict exists between these Terms and Conditions and any of Supplier's Terms and Conditions, these Terms and Conditions shall prevail. Reference Purchase Order number listed on reverse on all invoices and shipments.

SOLTRANS GENERAL PROVISIONS

1. **DEFINITIONS:** Throughout this contract, the following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.
 - a. “Business entity” means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
 - b. “Buyer” means Solano County Transit.
 - c. “Contract” means the bid documents, including the purchase order (if applicable), these General Provisions, the General Bid Instructions and Conditions, contract or agreement, by whatever name known or in whatever format used.
 - d. “Contractor” means the business entity with whom SolTrans enters into a contract. Contractor shall be synonymous with “supplier”, “vendor” or other similar term.
 - e. “Cost or Pricing Data” means facts available at the time of price agreement that prudent buyers and sellers would reasonably expect to affect price significantly. Cost or pricing data are factual, not judgmental, and are therefore, verifiable. While they do not indicate the accuracy of the prospective contractor’s judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also may include such factors as (1) sub-tier supplier quotations; (2) nonrecurring costs; (3) information on changes in production methods and in production or purchasing volume; (4) data supporting projections of business prospects and objectives and related operations costs; (5) unit-cost trends such as those associated with labor efficiency; (6) make-or-buy decisions; (7) estimated resources to attain business goals; (8) information on management decisions that could have a significant bearing on costs; (9) supplier negotiation decrement; and (10) cost/price analysis.
 - f. “Goods” means all types of tangible personal property, including but not limited to materials, supplies, equipment (“commodities”) and information and telecommunication technology.
 - g. “SolTrans” means Solano County Transit, its employees and authorized representatives.
 - h. “Purchasing Agent” means the Executive Director or his or her designee.
2. **CONTRACT FORMATION:**
 - a. If this contract results from a sealed bid, then contractor's bid is a firm offer to SolTrans which is accepted by the issuance of a SolTrans Purchase Order and no further action is required by either party.
 - b. If this contract results from a solicitation other than described in paragraph a), above, contractor's quotation or proposal is deemed a firm offer and this contract document is SolTrans’ acceptance of that offer.
3. **COMPLETE INTEGRATION:** This contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the contract.
4. **SEVERABILITY:** The contractor and SolTrans agree that if any provision of this contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the contract, the contract shall be terminated in a manner commensurate with the interests of both parties.
5. **JOINT BIDS/JOINT CONTRACTORS:** A joint bid (which is defined as two or more suppliers bidding jointly in one solicitation response) which resulted in the award of this contract shall be deemed one indivisible contract. Each joint contractor will be jointly and severally liable for the performance of the entire contract, and the joint contractors must designate, in writing, one individual having authority to represent them in all matters relating to the contract. SolTrans assumes no responsibility or obligation for the division of orders or purchases among joint contractors.
6. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of contractor, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of SolTrans.
7. **APPLICABLE LAW:** This contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this contract shall be in Solano County, Vallejo, California.
8. **COMPLIANCE WITH STATUTES AND REGULATIONS:** Contractor warrants and certifies that in the performance of this contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify SolTrans against any loss, cost, damage or liability by reason of contractor’s violation of this provision.
9. **CONTRACTOR’S POWER AND AUTHORITY:** The contractor warrants that it has full power and authority to grant the rights herein granted and will hold SolTrans harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, contractor agrees that it will not enter into any arrangement with any third party which might abridge any rights of SolTrans under this contract.
10. **ASSIGNMENT:** This contract shall not be assignable by the contractor in whole or in part without the written consent of SolTrans; such consent will not be unreasonably withheld.
11. **WAIVER OF RIGHTS:** Any action or inaction by SolTrans or the failure of SolTrans on any occasion, to enforce any right or provision of the contract, shall not be construed to be a waiver by SolTrans of its rights hereunder and shall not prevent SolTrans from enforcing such provision or right on any future occasion. The rights and remedies of SolTrans herein are cumulative and are in addition to any other rights or remedies that SolTrans may have at law or in equity.
12. **INTERPRETATION OF CLAUSE HEADINGS:** The use of headings throughout the contract is for convenience only and shall not be used to interpret or to govern the meaning of any specific provision of the contract.
13. **ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this contract, the following order of precedence shall apply:
 - a. special terms and conditions;
 - b. special provisions;
 - c. general terms and conditions, including these General Provisions;
 - d. specifications; and
 - e. all other attachments incorporated herein by reference.

The specifications shall prevail over any subsidiary documents referenced therein.

14. PACKING AND SHIPMENT:

- a. All goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - i. show the number of the container and the total number of containers in the shipment; and
 - ii. the number of the container in which the packing sheet has been enclosed.
- b. All shipments by contractor or its subcontractors must include packing sheets identifying: SolTrans' contract/purchase order number; item number; quantity and unit of measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required. Goods for different contracts shall be listed on separate packing sheets.
- c. Shipments must be made as specified in this contract, as it may be amended, or otherwise directed in writing by SolTrans.

15. TRANSPORTATION COSTS TAXES AND OTHER FEES OR EXPENSES: No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by SolTrans unless expressly included and itemized in the contract.

- a. Contractor must strictly follow contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. SolTrans may permit use of an alternate carrier at no additional cost to SolTrans with advance written authorization of the buyer.
- b. Unless otherwise definitely specified, the prices quoted herein do not include sales, use or other taxes.
- c. If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by SolTrans.
- d. All bids are for delivery not later than the time stated in the specifications, F.O.B. destination. All freight charges must be included.
- e. SolTrans DOES NOT PAY Federal Excise Taxes. Do not include these taxes in your bid price, but do indicate on the face of the bid the amount of any such tax. SolTrans will furnish all exemption certifications in lieu of such tax.

16. TIME IS OF THE ESSENCE: Time is of the essence in this contract.

17. DELIVERY: Contractor shall strictly adhere to the delivery and completion schedules specified in this contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If contractor delivers in excess of the quantities specified herein, SolTrans shall not be required to make any payment for the excess goods, and may return them to contractor at contractor's expense or utilize any other rights available to SolTrans at law or in equity.

18. SUBSTITUTIONS: Substitution of goods may not be tendered without advance written consent of the buyer. Contractor shall not use any specification in lieu of those contained in the contract without written consent of the buyer.

19. INSPECTION, ACCEPTANCE AND REJECTION:

- a. Contractor will provide and maintain a quality assurance system acceptable to SolTrans covering goods and services under this contract and will tender to SolTrans only those goods that have been inspected and found to conform to this contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to SolTrans during contract performance and for three years after final payment.

- b. All goods may be subject to inspection and test by SolTrans or its authorized representatives, at all times and places, including the period of manufacture or performance.
- c. Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to SolTrans. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection. All goods to be delivered hereunder may be subject to final inspection, test and acceptance by SolTrans at destination, notwithstanding any payment or inspection at source.
- d. SolTrans shall give notice of rejection of goods delivered or services performed hereunder within a reasonable time after receipt of such goods or performance of such services. Acceptance by SolTrans shall not waive any rights that the State might otherwise have at law or by express reservation in this contract with respect to any nonconformity.
- e. Contractor shall permit SolTrans to review procedures, practices, processes and related documents to determine the acceptability of Contractor's quality assurance system or other business practices related to performance of the contract.
- f. It shall be the contractor's continuing obligation throughout the term of the contract to advise the buyer in writing within three (3) working days following any discovery of potential or actual nonconformances prior to or during contract performance and/or subsequent delivery of goods or performance of services under this contract.

20. SAMPLES:

- a. Samples of items may be required by SolTrans for inspection and specification testing and must be furnished free of expense to SolTrans. The samples furnished must be identical in all respects to the products bid and/or specified in the contract.
- b. Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at contractor's expense.

21. WARRANTY: Unless otherwise specified, the warranties contained in this contract begin after acceptance has occurred.

- a. Contractor warrants that goods and services furnished hereunder will conform to the requirements of this contract (including all descriptions, specifications and drawings made a part hereof), and such goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by SolTrans, free from defects in design. SolTrans' approval of designs or specifications furnished by contractor shall not relieve the contractor of its obligations under this warranty.
- b. All warranties, including special warranties specified elsewhere herein, shall inure to SolTrans, its successors, assigns, customer agencies and users of the goods or services. SolTrans shall be provided with any and all materials (operations and maintenance manuals, data, specialized training) necessary to maintain warranty compliance at time of delivery. These materials must be received prior to acceptance / proper invoicing.

22. SAFETY AND ACCIDENT PREVENTION: In performing work under this contract on SolTrans premises, contractor shall conform to any specific safety requirements contained in the contract or as required by law or regulation. Contractor shall take any additional precautions as SolTrans may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this contract in accordance with the default provisions hereof.

23. TERMINATION FOR DEFAULT:

- a. SolTrans may, subject to paragraphs (d) and (e) below, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:

- i. Deliver the goods or to perform the services within the time specified in the contract or any amendment thereto;
 - ii. Make progress, so as to endanger performance of this contract (but see subparagraph (b) below); or
 - iii. Perform any of the other provisions of this contract (but see subparagraph (b), below).
- b. SolTrans' right to terminate this contract under subparagraphs (a)(ii) and (a)(iii) above, may be exercised if the contractor does not cure such failure within ten (10) days (or more if authorized in writing by the buyer) after receipt of the notice from the buyer specifying the failure.
- c. If SolTrans terminates this contract in whole or in part, it may acquire, under the terms and in the manner the buyer considers appropriate, goods or services similar to those terminated, and the contractor will be liable to SolTrans for any excess costs for those goods or services. However, the contractor shall continue the work not terminated.
- d. Except for defaults of subcontractors at any tier, the contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include, but are not limited to:
- i. Acts of God or of the public enemy,
 - ii. Acts of the federal or state government in either its sovereign or contractual capacity,
 - iii. Fires,
 - iv. Floods,
 - v. Epidemics,
 - vi. Quarantine restrictions,
 - vii. Strikes,
 - viii. Freight embargoes, and
 - ix. Unusually severe weather.
- In each instance, the failure to perform must be beyond the control and without the fault or negligence of the contractor.
- e. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted goods or services were obtainable from other sources in sufficient time for the contractor to meet the required delivery schedule.
- f. If the contract is terminated for default, SolTrans may require the contractor to transfer title and deliver to SolTrans, as directed by the buyer, any:
- i. Completed goods, and
 - ii. Partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the buyer, the contractor shall also protect and preserve property in its possession in which SolTrans has an interest.
- g. SolTrans shall pay contract price for completed goods delivered and accepted. The contractor and buyer shall agree on the amount of payment for manufacturing materials delivered and accepted for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. SolTrans may withhold from these amounts any sum the buyer determines to be necessary to protect SolTrans against loss because of outstanding liens or claims of former lien holders.
- h. If, after termination, it is determined that the contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of SolTrans.
- i. The rights and remedies of SolTrans in this clause are in addition to any other rights and remedies provided by law or under this contract.
- 24. RIGHTS AND REMEDIES OF SOLTRANS FOR DEFAULT:**
- a. In the event any goods furnished or services provided by the

- contractor in the performance of the contract should fail to conform to the requirements herein, or to the sample submitted by the contractor, SolTrans may reject the same, and it shall become the duty of the contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to SolTrans, and immediately replace all such rejected items with others conforming to the contract.
- b. In addition to any other rights and remedies SolTrans may have, SolTrans may require contractor, at contractor's expense, to ship goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the contractor.
 - c. In the event of the termination of the contract, either in whole or in part, by reason of default or breach by the contractor, any loss or damage sustained by SolTrans in procuring any items which the contractor agreed to supply shall be borne and paid for by the contractor.
 - d. SolTrans reserves the right to offset the reasonable cost of all damages caused to SolTrans against any outstanding invoices or amounts owed to contractor or to make a claim against the contractor therefore.
- 25. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**
- a. The contractor shall be liable for damages arising out of injury to the person and/or damage to the property of SolTrans, employees of SolTrans, persons designated by SolTrans for training, or any other person(s) other than agents or employees of the contractor, designated by SolTrans for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at the contractor's site or at SolTrans' place of business, provided that the injury or damage was caused by the fault or negligence of the contractor.
 - b. Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by the contractor during the contract.
- 26. INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless SolTrans, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by contractor in the performance of this contract.
- 27. DISCOUNTS:** All prompt payment discounts incorporated into the contract or stated on contractor's invoice shall be taken if the payment is made within the discount period. In the event that more than one discount is provided, SolTrans will take the most favorable discount.
- 28. INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.
- 29. REQUIRED PAYMENT DATE:** Unless otherwise specified, payment will be made in accordance with terms specified in contract. Payment shall not be due until the later of: (a) the date of acceptance of goods or performance of services; or (b) receipt of an accurate invoice.
- 30. TAXES:** SolTrans is exempt from Federal excise taxes. SolTrans will only pay for any state or local sales or use taxes on the taxable services rendered or goods supplied to SolTrans pursuant to this contract.

- 31. NEWLY MANUFACTURED GOODS:** All goods furnished under this contract shall be newly manufactured goods; used or reconditioned goods are prohibited, unless otherwise specified.
- 32. CONTRACT MODIFICATION:** The contract shall not be modified by or interpreted by reference to any course of dealing or usage of trade and shall not be modified by any course of performance. No modification of the contract shall be effective unless in writing and signed by SolTrans.
- 33. UNILATERAL CHANGES:**
- a. SolTrans may, any time, exclusively in a writing signed by an authorized employee or agent of SolTrans, and without notice to sureties, make changes within the general scope of this contract which affect the (a) drawings, designs or specifications; (b) method of shipment or packing; (c) place of inspection, delivery or acceptance; (d) delivery schedules; (e) quantities; or (f) description of services to be performed; time of performance of services (i.e., hours of the day, days of the week, etc.); or place of performance of services.
 - b. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this contract, a contract adjustment shall be made in the contract price or delivery schedule or both, and the contract shall be modified in writing accordingly. Any request by contractor for adjustment under this provision must be asserted in writing to the buyer not later than thirty (30) days after the date of receipt by contractor of written change direction, or within such extension as SolTrans may grant in writing. SolTrans may, in its sole discretion, consider any such request regardless of when asserted. Pending any such adjustment, contractor will diligently proceed with the contract as modified. Where the cost of property made excess or obsolete as a result of the change is included in contractor's request for contract adjustment, SolTrans shall have the right to direct the manner of disposition of such property. SolTrans shall have the right to require the submission of supporting cost or pricing data and/or to inspect contractor's pertinent books and records for the purpose of verifying contractor's request and determining the basis for entitlement to an adjustment.
 - c. Contractor's request for contract adjustment shall be in the form of a complete change proposal fully supported by factual information and shall separately identify all increases and all decreases in costs. The request shall be submitted by a person duly authorized by the contractor in a signed writing that contains the following certification statement: "I certify that the request is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief and that the amount requested accurately reflects the contract adjustment for which (insert contractor's name here) believes SolTrans is liable."
- 34. BILATERAL CHANGES**
- a. SolTrans and Contractor may, any time, exclusively in a writing signed by an authorized agent or employee of both SolTrans and Contractor, and without notice to sureties, make changes within the general scope of this contract. Changes which are within the general scope include, but are not limited to changes that (a) could have been reasonably contemplated at the time the contract was solicited and entered into by the contractor, SolTrans, and other offerors; (b) do not change the "nature" or "type" of work; (c) do not increase the amount of work beyond the general scope; (d) minor changes in quantities.
- 35. CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to SolTrans' operation which are designated confidential by SolTrans and made available to the contractor in order to carry out this contract, or which become available to the contractor in carrying out this contract, shall be protected by the contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to SolTrans. The identification of all such confidential data and information as well as SolTrans' procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by SolTrans in writing to the contractor. If the methods and procedures employed by the contractor for the protection of the contractor's data and information are deemed by SolTrans to be adequate for the protection of SolTrans' confidential information, such methods and procedures may be used, with the written consent of SolTrans, to carry out the intent of this paragraph. The contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the contractor's possession, is independently developed by the contractor outside the scope of this contract, or is rightfully obtained from third parties.
- 36. NEWS RELEASES:** Unless otherwise exempted, news releases pertaining to this contract shall not be made without prior written approval of SolTrans.
- 37. PATENT, COPYRIGHT and TRADE SECRET INDEMNITY:**
- a. Contractor shall hold SolTrans, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract.
 - b. Contractor may be required to furnish a bond to SolTrans against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
 - c. Contractor, at its own expense, shall defend any action brought against SolTrans to the extent that such action is based upon a claim that the goods or software supplied by the contractor or the operation of such goods pursuant to a current version of contractor supplied operating software infringes a United States patent or copyright or violates a trade secret. The contractor shall pay those costs and damages finally awarded against SolTrans in any such action. Such defense and payment shall be conditioned on the following:
 - i. That the contractor shall be notified within a reasonable time in writing by SolTrans of any notice of such claim; and,
 - ii. That the contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, SolTrans shall have the option to participate in such action at its own expense.
 - d. Should the goods or software, or the operation thereof, become, or in the contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, SolTrans shall permit the contractor at its option and expense either to procure for SolTrans the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by SolTrans shall be prevented by injunction, the contractor agrees to take back such goods or software and make every reasonable effort to assist SolTrans in procuring substitute goods or software. If, in the sole opinion of SolTrans, the return of such infringing goods or software makes the retention of other goods or software acquired from the contractor under this contract impractical, SolTrans shall then have the option of terminating such contracts, or applicable portions thereof, without penalty or termination charge. The contractor agrees to take back such goods or software and refund any sums SolTrans has paid contractor less any reasonable amount for use or damage.
 - e. The contractor shall have no liability to SolTrans under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
 - i. The combination or utilization of goods furnished

- hereunder with equipment or devices not made or furnished by the contractor; or,
- ii. The operation of equipment furnished by the contractor under the control of any operating software other than, or in addition to, the current version of contractor-supplied operating software; or
 - iii. The modification by SolTrans of the equipment furnished hereunder or of the software; or
 - iv. The combination or utilization of software furnished hereunder with non-contractor supplied software.
- f. The foregoing states the entire liability of the contractor to SolTrans with respect to infringement of patents, copyrights or trade secrets.
- 38. EXAMINATION AND AUDIT:** Contractor agrees that SolTrans, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated due to grant or other government requirements. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, contractor agrees to include a similar right of SolTrans to audit records and interview staff in any subcontract related to performance of this contract.
- 39. COST OR PRICING DATA:** At all times during and following the period of contract performance, SolTrans may require contractor to furnish such cost and pricing data as SolTrans deems necessary to assess the reasonableness of contract pricing, including the reasonableness of changes.
- 40. DISPUTES:**
- a. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this contract, unless SolTrans, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the contract, contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which contractor believes SolTrans is liable. If the contractor is not satisfied with the decision of the Director or designee, the contractor may appeal the decision to the Executive Director. In the event that this contract is for information technology goods and/or services, the decision may be appealed to an Executive Committee of SolTrans and contractor personnel.
 - b. Pending the final resolution of any dispute arising under, related to or involving this contract, contractor agrees to diligently proceed with the performance of this contract, including the delivery of goods or providing of services in accordance with SolTrans' instructions. Contractor's failure to diligently proceed in accordance with SolTrans' instructions shall be considered a material breach of this contract.
 - c. Any final decision of SolTrans shall be expressly identified as such, shall be in writing, and shall be signed by SolTrans Executive Director or SolTrans Attorney, if an appeal was made. If SolTrans fails to render a final decision within 90 days after receipt of contractor's demand, it shall be deemed a final decision adverse to contractor's contentions. SolTrans' final decision shall be conclusive and binding regarding the dispute unless contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is
- later.
- 41. STOP WORK:**
- a. SolTrans may, at any time, by written Stop Work Order to the contractor, require the contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the Stop Work Order is delivered to the contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the contractor, or within any extension of that period to which the parties shall have agreed, SolTrans shall either:
 - i. Cancel the Stop Work Order; or
 - ii. Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this contract.
 - b. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the contractor shall resume work. SolTrans shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the contract shall be modified, in writing, accordingly, if:
 - i. The Stop Work Order results in an increase in the time required for, or in the contractor's cost properly allocable to the performance of any part of this contract; and
 - ii. The contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if SolTrans decides the facts justify the action, SolTrans may receive and act upon a proposal submitted at any time before final payment under this contract.
 - c. If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of SolTrans, SolTrans shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
 - d. If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated for default, SolTrans may allow, by equitable adjustment or otherwise, reasonable costs resulting from the Stop Work Order.
 - e. An appropriate equitable adjustment may be made in any related contract of the contractor that provides for adjustment and is affected by any Stop Work Order under this clause. SolTrans shall not be liable to the contractor for loss of profits because of a Stop Work Order issued under this clause.
- 42. TERMINATION FOR THE CONVENIENCE OF SOLTRANS:**
- a. SolTrans may terminate performance of work under this contract for its convenience in whole or, from time to time, in part, if the Purchasing Agent or his or her designee determines that a termination is in SolTrans' interest. The Purchasing Agent or designee shall terminate by delivering to the contractor a Notice of Termination specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the contract, the contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the contract shall not be void.
 - b. After receipt of a Notice of Termination, and except as directed by SolTrans, the contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
 - i. Stop work as specified in the Notice of Termination.
 - ii. Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 - iii. Terminate all subcontracts to the extent they relate to the

- work terminated.
- iv. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification of which will be final for purposes of this clause.
- v. As directed by SolTrans, transfer title and deliver to SolTrans (a) fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (b) completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to SolTrans.
- vi. Complete performance of the work not terminated.
- vii. Take any action that may be necessary or as SolTrans may direct for the protection and preservation of the property related to this contract that is in the possession of the contractor and in which SolTrans has or may acquire an interest and to mitigate any potential damages or requests for contract adjustment or termination settlement to the maximum practical extent.
- c. At the completion of the contractor’s termination efforts, the contractor may submit to SolTrans a list, indicating quantity and quality of termination inventory not previously disposed of, and request instruction for disposition of the residual termination inventory.
- d. After termination, the contractor shall submit a final termination settlement proposal to SolTrans in the form and with the certification prescribed by SolTrans. The contractor shall submit the proposal promptly but no later than ninety (90) days from the effective date of termination, unless extended in writing by SolTrans upon written request of the contractor within the ninety (90) day period. However, if SolTrans determines that the facts justify it, a termination settlement proposal may be received and acted on after the expiration of the filing period or any extension. If the contractor fails to submit the proposal within the time allowed, SolTrans may determine on the basis of information available, an equitable adjustment amount, if any, due the contractor because of the termination and shall pay the amount determined.
- e. The contractor and SolTrans may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done, including a reasonable amount for accounting, legal, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data; and storage, transportation and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. However, the agreed amount may not exceed the total contract price as reduced by:
 - i. the amount of payments previously made and
 - ii. the contract price of work not terminated.
 - iii. The contract shall be amended, and the contractor paid the agreed amount.
- f. If the contractor and SolTrans fail to agree on the whole amount to be paid because of the termination of the work, SolTrans shall pay the contractor the amounts determined by SolTrans as follows, but without duplication of any amounts agreed on as set forth above:
 - i. The contract price for completed supplies or services accepted by SolTrans (or sold or acquired) not previously paid for, adjusted for any saving of freight and other charges.
 - ii. The total of:
 - 1. The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid; and
 - 2. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and
 - 3. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- g. Except for normal spoilage, and except to the extent that SolTrans expressly assumed the risk of loss, SolTrans shall exclude from the amounts payable to the contractor, the fair value, as determined by SolTrans, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to SolTrans or to a buyer.
- h. The contractor shall use generally accepted accounting principles and sound business practices in determining all costs claimed, agreed to, or determined under this clause. Such costs shall be allocable to the terminated contract or portion thereof, allowable under applicable laws, regulations, generally accepted accounting principles, good business judgment and objectively reasonable.
- i. The contractor shall have the right of appeal, under the Disputes clause, from any determination made by SolTrans, except that if the contractor failed to submit the termination settlement proposal within the time provided and failed to request a time extension, there is no right of appeal. If SolTrans has made a determination of the amount due, SolTrans shall pay the contractor
 - i. the amount determined if there is no right of appeal or if no timely appeal has been taken, or
 - ii. the amount finally determined on appeal.
 Following any attempted administrative resolution with the Purchasing Agent or designee, the contractor may proceed in accordance with the Disputes clause of the contract.
- j. In arriving at the amount due the contractor under this clause, there shall be deducted:
 - i. All payments to the contractor under the terminated portion of this contract;
 - ii. Any claim which SolTrans has against the contractor under this or any other contract; and
 - iii. The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the contractor or sold under the provisions of this clause and not recovered by or credited to SolTrans.
- k. If the termination is partial, the contractor may file a proposal with SolTrans for an equitable adjustment of the price(s) of the continued portion of the contract. SolTrans shall make any equitable adjustment agreed upon. Any proposal by the contractor for an equitable adjustment under this clause shall be requested within thirty (30) days from the effective date of termination unless extended in writing by SolTrans.
- l. SolTrans may:
 - i. Under the terms and conditions it prescribes, take partial payments and payments against costs incurred by the contractor for the terminated portion of the contract, if SolTrans believes that the total of these payments will not exceed the amount to which the contractor will be entitled.
 - ii. If the total payments exceed the amount finally determined to be due, the contractor shall repay the excess to SolTrans upon demand, together with interest computed at the rate established by the California Treasurer’s Pooled Money Investment Fund Rate. Interest shall be computed for the period from the date the excess payment is received by the contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the contractor’s termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by SolTrans because of the circumstances.
- m. In determining the amount payable to the contractor and notwithstanding any other provision, if it appears that the contractor would have sustained a loss on the entire contract had it been completed, SolTrans shall allow no profit and shall reduce the settlement to reflect the indicated rate of loss.
- n. Unless otherwise provided in this contract or by statute, the

contractor shall maintain all records and documents relating to the terminated portion of this contract for three years after final settlement. This includes all books and other evidence bearing on the contractor's costs and expenses under this contract. The contractor shall make these records and documents available to SolTrans, at the contractor's office, at all reasonable times, without any direct charge. If approved by SolTrans, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

43. CONFLICT OF INTEREST:

- a. Current SolTrans Employees:
 - i. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by SolTrans, unless the employment, activity or enterprise is required as a condition of regular SolTrans employment.
 - ii. No officer or employee shall contract on his or her own behalf as an independent contractor with SolTrans to provide goods or services.
- b. Former SolTrans Employees:
 - i. For the two-year period from the date he or she left SolTrans employment, no former SolTrans officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by SolTrans.
 - c. For the twelve-month period from the date he or she left SolTrans employment, no former SolTrans officer or employee may enter into a contract with SolTrans if he or she was employed by SolTrans in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving SolTrans service.

44. COVENANT AGAINST GRATUITIES: The contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of SolTrans with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, SolTrans shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by SolTrans in procuring on the open market any items which contractor agreed to supply shall be borne and paid for by the contractor. The rights and remedies of SolTrans provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

45. NONDISCRIMINATION CLAUSE:

- a. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b. The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

46. RECYCLING: Contractor hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods,

supplies offered, or products used in the performance of this contract meet or exceed the minimum percentage of recycled material as defined in Section 12161 and 12220 of the PCC. In addition, the COV Administrative Rule 6.8 requires all contractors doing business with the COV to comply with efforts to reduce waste as required in the CA Intergrated Waste Management Act of 1989 (AB939). This requirement includes submitting proposals printed on two-sided copies and recycled paper, with reusable bindings or staples. Contractors may also be asked to provide documentation on its recycling efforts as it pertains to contracts with SolTrans.

47. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of the National Labor Relations Board.

48. ASSIGNMENT OF ANTITRUST ACTIONS:

- a. In submitting a bid to SolTrans, the supplier offers and agrees that if the bid is accepted, it will assign to SolTrans all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, material, or services by the supplier for sale to SolTrans pursuant to the solicitation. Such assignment shall be made and become effective at the time SolTrans tenders final payment to the supplier.
- b. If SolTrans receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from SolTrans any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by SolTrans as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- c. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
 - i. the assignee has not been injured thereby, or
 - ii. the assignee declines to file a court action for the cause of action.

49. PERSONNEL:

Contractor shall assign only competent personnel to perform services pursuant to this contract. In the event SolTrans, in its sole discretion, at any time during the term of this contract, desires the removal of any person or persons assigned by contractor perform services pursuant to this contract, Contractor shall remove any such person immediately upon receiving notice from SolTrans of its desire for the removal of such person or persons.

50. BUSINESS LICENSE REQUIRED

In accordance with COV Municipal Code Section 5.04.115, any person or company conducting business in the COV must obtain a business license and pay the fee applicable to the type and location of business. The successful contractor, bidder or proposer will be required to show compliance with this requirement prior to the award of the contract. Information pertaining to business license fees should be directed to the COV Commercial Services Division- 555 Santa Clara St. Vallejo, CA. 94590- 707 648-4310. Similar provisions apply if the performance of the contract will occur mainly in the City of Benicia.

51. NON-AGENT CLAUSE:

Except as SolTrans may specify in writing, the contractor and its personnel shall have no authority, express or implied, to act on behalf of SolTrans in any capacity whatsoever as an agent. The contractor and its personnel shall have no authority, express or implied to bind SolTrans to any obligations whatsoever.

OTHER AGENCY “PIGGY-BACK” PROCUREMENTS:

Other joint powers agencies, municipalities, school districts, recreation districts, or public agencies may be interested in purchasing equipment as procured through this solicitation. The seller is to indicate on the bid worksheet of this request for quotation if pricing offered in this bid will be extended to other public agencies not later than ninety (90) days after award by Solano County Transit. Any such piggy-back awards will be made independently by each agency, and SolTrans is not an agent, partner or representative of these agencies and is not obligated or liable for any action of debts that may arise out of such independently negotiated piggy-back procurements.

52. NON-COLLUSION

Supplier/contractor certifies under penalty of perjury that this proposal is genuine and is not collusive or a sham proposal made in the interest of, or in behalf of any persons not herein named.

That any of its officers, owners, agents, representatives, employees, or parties in interest, including this affiant, has not in any way colluded, conspired, connived or agreed, directly or indirectly, with any other bidder, firm or person to submit a collusive or sham proposal in connection with such contract, or has in any manner, directly or indirectly, sought by unlawful agreement or connivance with any other bidder, firm, or person to fix the price or prices in said proposal, or to secure through collusion, conspiracy, connivance, or unlawful agreement any advantage against Solano County Transit or any person interested in the proposed contract.

That the price or prices quoted in the proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the bidder or any of its agents, owners, representatives, employees, or parties in interest, including this affiant.

SPECIAL PROVISIONS

1. Scope of Contract

It is the intent of SolTrans to award a Contract to furnish and deliver CARB Ultra Low Sulfur Red Dye #2 Diesel and Unleaded Reg 87 10% Ethanol Gasoline in accordance with these specifications and as more particularly described in the Technical Specifications which are included herewith.

2. Registration to receive Addenda

In order to receive addenda, interested parties must register [HERE](#)¹, or call 707.648.5288 to be added to the list, or to report any technical problems with registration.

3. Definitions

Agency or Agencies shall mean SolTrans or the City of Vallejo, or both.

4. Schedule of Activities

Listed below is the "Schedule of Activities" which outlines pertinent dates of which bidders should make themselves aware:

- a. A Pre-Bid conference will not be held. To arrange a site visit, please call 707.648.5288.
- b. Requests for Clarification / Interpretation must be in writing and provided to SolTrans's contact person no later than 4:00 pm, six (6) working days prior to Bid Opening.
- c. Requests for Approved Equals must be in writing and provided to SolTrans's contact person no later than 4:00pm, six (6) working days prior to Bid Opening. (See GC Section 2 (b).)
- d. Responses to b. and c. above will be provided no later than four (4) working days prior to bid opening.

5. Pre-Bid Conference

- a. A Pre-Bid Conference will not be held.

6. Qualification of Bidders

SolTrans may reject the bid of any bidder deemed not to possess the minimum qualifications to perform the required work. In order to be deemed minimally qualified, a Bidder must, at the time of the bid opening must:

¹ https://docs.google.com/a/soltransride.com/spreadsheet/viewform?hl=en_US&formkey=dFE2UWJOVWtYTTdpUGkyZ2JXN0JSMmc6MQ#gid=0

- a. be a person or firm having the capabilities and proper licensing to perform the Scope of Work and / or securing specialty subcontractors who are properly licensed to perform the specialty work required for the types of services shown in the technical specifications; and
- b. have the equipment, materials, tools and labor force capable of performing the work within the required time frame; and
- c. Not be on Federal or State debarred vendors lists.

Each bidder shall submit a list of five (5) firms for which it provides or has provided comparable services within the past two years. Contact information shall include the firm name, a short description of the work performed, contact person's name, email address, telephone number.

7. Term of Contract

The term of Contract shall commence on the date specified in a written Notice to Proceed, and shall continue thereafter for a two (2) - year period, unless terminated sooner pursuant to the Contract Termination Clause. All contracts awarded under this solicitation shall have a final expiration date, after application of all applicable options, or no later than December 31, 2016.

The Contract includes three (3) successive one-year options which will automatically take effect at the end of each contract period, unless the Contractor is notified in writing not less than ninety(90) days before the end of the applicable contract period of its decision not to extend. The same pricing standard shall continue in effect during the option period(s).

8. Bid Prices / Completion of Bid Form

Where prices are called for in the Bid Form, the prices shall include all cost required to perform the work, including overhead, profits, services, insurance, delivery charges and any and all applicable costs except the taxes and fees described below. The bid Forms contain a sheet from each participating agency. Bidders may offer a bid for one or more participant(s).

In order for a bid to be considered responsive and compliant, bidders must complete the space reflecting the RACK AVG price per gallon of CARB ULS in the tables titled "OPIS GROSS NO. 2 RED DYED, based on the PADD 5 wholesale prices for San Francisco, CA, as shown in the issue of Oil Price Information Service (OPIS) dated "issued 10-24-11". Bidders must complete the space marked "ADD ON", or the space marked "DEDUCT" or, if the OPIS prices will apply with no addition or deduction, the bidder should check the space marked "BIDDING NET RACK AVERAGE". Bidder must carry out the "ADD ON" or "DEDUCT" factor to ten one thousandths of a cent. This factor will be applied to the per gallon price published in the OPIS issue of October 24, 2011 to determine the Unit Bid Price per Gallon. The Unit Bid Price per Gallon will then be multiplied by the number of estimated gallons for the two-year period of the base contract to determine the "ESTIMATED GRAND TOTAL BID PRICE."

The bid prices shall exclude any and all federal taxes and applicable California State sales or use taxes. The bid prices shall also exclude any applicable Superfund or Spill fees. These taxes

and fees are intentionally excluded from the Bid Form for the purpose of price comparisons only but will be applied, as required, at invoicing.

Bidders shall take note on each bid form of the type of fuel to be supplied. In the event there is a discrepancy between the computed Estimated Grand Total Bid Price and the unit price, the unit price shall control and the mathematical error will be corrected accordingly.

During the term of this contract, the prices for fuels furnished hereunder may be adjusted only in the manner set forth herein. After the issuance of a written Notice to Proceed, prices shall be adjusted automatically on a daily basis. Said adjustments shall be made based on the “RACK AVG” price of “OPIS GROSS RFG ETHANOL(10%) PRICES” and “OPIS GROSS ULTRA LOW SULFUR RED DYE DISTILLATE PRICES – No.2” as shown in PADD 5, San Francisco, of the current daily OPIS, plus, if applicable, the “ADD ON” or minus the “DEDUCT” factor originally bid by the Contractor. Adjusted prices are to become effective on the “Issued” date of each OPIS publication.

Each bidder shall include, with their bid response, a copy of the OPIS Fax-A-Rack dated October 24, 2011 for each PADD 5 rack used in their bid response.

9. Delivery Instructions

Each Agency will order fuel by telephone at least twenty-four (24) hours prior to the required date/time for delivery. Contractor shall provide fuel within the agreed delivery procedures.

The minimum order placed by a participating agency will normally be for one truck and trailer or approximately 7,000 to 7,600 gallons. A minimum order may include mixed compartment loads on a single truck-trailer. For example, one compartment may be gasoline and the remainder of the load will be ULSD. Bulk deliveries of fuel must be accompanied by documentation from the Contractor’s supplier showing the amount of fuel picked up by the Contractor from its supplier.

In the event of emergency fuel supply needs arising from the failure of any participating agency’s fuel supply systems, power outages, or from natural disasters, the Contractor shall guarantee the participating agencies the exclusive use of pump-equipped supply tankers for participating agencies employees to directly dispense fuel into equipment at the participating agencies’ locations or at alternate staging areas designated by the participating agency. Such emergency supply will be made available within 12 hours of notification by the participating agency to the Contractor and will be supplied at the same fuel cost as regular deliveries, plus reasonable standby equipment charges, unless the Contractor is unable to do so as a result of natural disaster. In this case, Contractor shall immediately notify all participating agencies of its inability to supply tankers.

10. Delivery Locations / Times for Performance and Billing Addresses

Contractor shall make delivery of fuel to the locations listed below and only during the times indicated by each Agency as follows:

A. Solano County Transit (SolTrans)

SolTrans Bus Maintenance and Operations Facility
1850 Broadway
Vallejo, CA 94590

Delivery Hours: 7:00 am through 4:00 pm
Deliveries Accepted: Monday through Friday

Bill to:
SolTrans Accounts Payable
311 Sacramento Street
Vallejo, CA 94590

B. City of Vallejo

Vallejo Baylink Ferry
Building 477 – Waterfront Avenue
Mare Island
Vallejo, CA 94592

Delivery Hours: No later than 11:00pm daily (except Thanksgiving, Christmas
and New Years days)
Deliveries Accepted: Daily delivery is required.

Billing to:
David A. Kleinschmidt
555 Santa Clara St.
Vallejo, CA 94590

11. Product Testing

Bidder must certify that furnished product meets minimum specifications to qualify for award of Contract. During the term of Contract, the participating agency may elect to sample fuel at any time it is delivered to each location. Delivery personnel will cooperate with the agency or third party collecting the sample. Sample will be tested by an independent third party laboratory and a report will be issued to the participating agency-designated contact.

If testing reveals that non-compliant fuel was delivered, Contractor shall, at its sole cost and expense, replace non-compliant fuel with fuel meeting contract specifications, and pay for subsequent independent testing to ensure fuel quality. Contractor will be responsible for any fines or cost or expense relating to Contractor's delivery of non-compliant fuel, including cost of independent testing, and shall indemnify, hold and save harmless Soltrans and the City of

Vallejo, and their directors, officers, employees, and agents respectively against all suits or claims that may be related to such fines in accordance with the provisions of these contract documents.

12. Payment and Invoicing Instructions

a. Contract Type – Indefinite Delivery Indefinite Quantity with and Economic Price Adjustment

During the term of this Contract, SolTrans will make payment to the Contractor at the unit prices quoted on the Bid Form in accordance with invoices that reflect the amount for items actually furnished to and accepted by SolTrans. Payment shall include full compensation for furnishing all of the labor, tools, equipment, applicable taxes, profit, insurance, overhead, subcontractor costs and any other costs necessary to complete the work. SolTrans will endeavor to make payment of approved invoices within thirty (30) calendar days of receipt of approved invoices. (Please note that SolTrans is exempt from Federal excise tax, but is subject to applicable California Sales Tax, as well as other associated regulatory fees, which shall be included on invoices as appropriate.)

b. Invoicing

Bidder's invoices must contain the name of this project, be billed and payable in U.S. dollars, and be addressed to the Contract Administrator. Invoices MUST contain the following information in addition to the invoice amount:

- i. SolTrans PO Number
 - ii. Description of product or services billed under the invoice
 - iii. Date of Invoice Issuance
 - iv. Sequential Invoice Number
 - v. Social Security Number of Taxpayer Identification Number
 - vi. Amount of the invoice
 - vii. Total Billed to Date
- If Subcontractors are utilized
- viii. Invoice total amount broken down by subcontractor
 - ix. Subcontractor payments to date by subcontractor
 - x. Proof of payment to subcontractors from previous invoice

13. Bonding

- a. A bidders bond in the penal sum of TEN PERCENT (10%) OF THE TOTAL AMOUNT OF THE BID is required (see also General Instructions and Conditions, section 12).

14. Spill Liability Protection

Contractor shall be responsible and held liable for all losses, damages, and penalties that may be sustained by SolTrans or the City of Vallejo or imposed on SolTrans or the City of Vallejo by any outside agency as a result of spills. Contractor's drivers or subcontractors will immediately report any spill to the SolTrans or City of Vallejo designated contact. The

Contractor will be billed for the replacement cost of any clean-up materials used as well as any labor or other costs expended in the clean-up of any spill or in the repair of SolTrans or City property damaged by reason of a spill. In the event Contractor fails to pay the billed amount within (30) days of SolTrans or City of Vallejo invoice, SolTrans or the City of Vallejo will deduct the billed amount from amounts due and owing to Contractor under this contract.

Contractor will insure its representative immediately report any fuel spills of one gallon or more during the fuel delivery process to the designated contact for SolTrans or the City of Vallejo.

Contractor will indemnify SolTrans or the City of Vallejo, their Directors, Officers, employees and agents and hold them harmless from losses, damages, and penalties imposed on SolTrans or the City of Vallejo by third parties. SolTrans and the City of Vallejo reserve the right to terminate the Contract if, notwithstanding compliance with the procedures set forth herein, Contractor delivers fuel in a negligent or careless manner or causes a spill of fuel while delivering to SolTrans or City of Vallejo facilities.

15. Assignability

The City of Vallejo may assign all or part its rights and responsibilities under this contract to the Water Emergency Transportation Authority at any point during the term of this contract. This assignment will provide for changes to the corresponding administrative changes necessary to carry out the provisions of the assignment, and it shall not result in a change to the bid price.

16. Insurance

When performing work on property in the care, custody or control of SolTrans, contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance SolTrans deems appropriate under the contract. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to SolTrans. Upon request by SolTrans, the contractor may be required to have SolTrans shown as an "additional insured" on selected policies. The insurance rating must be A:VII or better.

Prior to award, the successful bidder or bidders will be required to furnish evidence of insurance as follows:

- a. Contractor will maintain and keep in force, during the full term of the contract, insurance in the following amounts and coverage:
 1. Workers' Compensation, with Employers' Liability limits not less than \$1,000,000 each accident, including a waiver of subrogation.
 2. Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit Bodily Injury and Property Damage, including Contractual Liability, Independent Contractor, Property Damage, Personal Injury, Products and Completed Operations.

3. Pollution liability insurance covering all operations for both gradual and sudden events in an amount not less than \$1,000,000 per occurrence and \$2,000,000 annual policy aggregate, subject to a deductible or self-insured retention of no more than \$25,000 per occurrence.
 4. Business Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit Bodily Injury and Property Damage, including Owned and Not-owned and hired auto coverage's, as applicable.
- b. Commercial General Liability and Comprehensive Automobile Liability Insurance policies shall be endorsed to provide the following:
1. Name as ADDITIONAL INSUREDS Solano County Transit, its Officers, Agents, and Employees.
 2. That such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- c. ALL POLICIES SHALL PROVIDE:
 Thirty (30) days advance written notice to SolTrans of cancellation, non-renewal or reduction in coverage, mailed certified return receipt to the following address:

Solano County Transit
 ATTN: Director of Administrative Services
 311 Sacramento Street
 Vallejo, CA 94590

Any deductibles or self-insured retentions exceeding \$50,000 must be declared to and approved by SolTrans. At the option of SolTrans, either: the Contractor shall reduce or eliminate such deductibles or self-insured retentions with respect to the SolTrans, its officers, officials, employees and volunteers; or Contractor shall provide a financial guarantee satisfactory to the SolTrans guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Before commencement of the term of this contract, certificates of insurance, in form and with insurers acceptable to SolTrans, evidencing all required insurance, shall be furnished to SolTrans, with complete copies of policies upon request.

Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this contract and without lapse, for a period of three years beyond the contract expiration, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the contract, such claims shall be covered by such claims-made policies.

Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit and provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence limits specified above.

Should any required insurance lapse during the contract term; requests for payments originating after such lapse shall not be processed until SolTrans receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, SolTrans may, at its sole option, terminate this agreement effective on the date of such lapse of insurance.

Approval of the insurance by SolTrans shall not relieve or decrease the liability of the Contractor hereunder.

SPECIFICATIONS

1. GENERAL

It is the intent of these specifications to describe the requirements for the supply of CARB Ultra-Low Sulfur Diesel Fuel (hereinafter referred to as "Diesel Fuel"), and/or Unleaded Gasoline to the listed Participating Agencies and other local government agencies. The diesel fuel supplied under this contract shall be a petroleum distillate conforming to ASTM-D975 and having the minimum and/or maximum characteristics as more particularly defined in Technical specification 4 below.

The unleaded gasoline supplied under this contract shall meet the minimum and/or maximum characteristics as more particularly defined in Technical Specification 5 below.

These minimum and/or maximum characteristics have been established by the participating agencies, in concert with the minimum requirements of the engine manufacturers who have provided engines for the buses currently operated by the Agencies. These specifications shall take precedence over ASTM-D975 where deviations are noted.

The successful bidder shall supply the ultra-low diesel fuel, bio-diesel and/or unleaded gasolines in accordance with these specifications and within the schedule of services described in the Special Provisions during the term of the Contract.

2. CONFORMITY

All bidders must conform to these specifications and the products they furnish shall be of first class quality and the equipment used to provide said products shall be the best obtainable in the various trades.

No advantage shall be taken by the manufacturer in the addition and/or omission of any ingredient or detail, which makes the diesel fuel non-compliant with any of the specifications, even though such details are not mentioned in these specifications.

In all cases, products must be furnished as specified, but if the term "approved equal" is used, the Contract Manager(s) must approve any product substituted for a specified product. All material not specified shall be the manufacturer's standard products.

3. RESPONSIBILITY

The Contractor shall assume responsibility for all products and services associated with this Contract, whether they be provided by the Contractor or purchased ready-made from an outside source.

4. ULTRA-LOW SULFUR DIESEL FUEL SPECIFICATION

The diesel fuel supplied shall be a certified petroleum distillate, with NO ADDITIVES ADDED except where noted otherwise, having the following characteristics:

It is the intent of these specifications to describe the requirements for the supply of CARB Ultra-Low Sulfur Diesel Fuel. The fuel shall be compatible for use with Cummins and Detroit Diesel engines and approved by the manufacturers for use with their engines. The ultra-low sulfur diesel fuel shall in no way harm existing and future diesel engines. The ultra-low sulfur diesel fuel shall be a petroleum distillate conforming to ASTM-0975 and shall have the minimum and/or maximum characteristics as described below.

The fuel shall be CARB diesel fuel with a maximum sulfur content of 15 ppm and have the following characteristics:

Property	Units	Specification	Test Method
Sulfur	PPM, max.	15	ASTM D-5453-93
Lubricity	SBOCLE,g, min.	3100	ASTM D-6078
	HFRR,microns, max.	520	ASTM D-6079
Aromatics	vol. %, max.	30	ASTM D-1319
Ash	wt. %, max.	.01	ASTM D-482
Cetane Number	min.	45	ASTM D-613
Color	ASTM, max.	2.5	ASTM D-1500
Conductivity	cu, min.	75 (may vary w/ season)	ASTM D-2624
Copper Corrosion	3hr @ 122 deg F,max.	3	ASTM D-130
Distillation	deg F	550	ASTM D-86
	(Temp @ 90%, recovered, max)		
Flash Point	deg F, min.	100	ASTM D-93
Gravity	deg. API, min	37	ASTM D-287
Pour Point	deg. F, max	-30	ASTM D-97
	(may vary with region and season)		
Viscosity	cSt @ 40 deg C	1.3-1.9	ASTM D-445
Water & Sediment	vol. %, max.	.05	ASTM D2709

The bidder must certify that the ultra-low sulfur diesel fuel to be supplied under this Contract meets EPA and CARB requirements.

5. UNLEADED GASOLINES

The Unleaded Gasolines shall be pump grade with Octane ratings of 87 or 89 as noted on the bid forms. All unleaded gasolines shall have been refined in the United State of America.

6. FUTURE FUEL SPECIFICATION CHANGES

During the term of this Contract, the Agencies may require a change in Fuel specification to comply with any change in federal, state, or local laws governing fuel properties. In the event that such

changes are necessary, the Agencies shall notify their respective Contractor in writing of the requested change.

The Contractor shall provide the Agency with the change in the cost per gallon of fuel to the price bid for the original Contract. If an Agency and Contractor cannot reach an agreement on the added cost for the requested change, the Contract may be terminated by either party with 60 days written notice to the other party. Until termination, the reasonable determination of the Agency's Director of Maintenance as to the cost of the new fuel shall prevail.

Bid Work-Sheet

SolTrans – Delivery to 1850 Broadway, Vallejo CA (San Francisco OPIS Daily Average Rack Rate)

The undersigned hereby proposes to furnish and deliver the goods and/or services as specified at the prices and terms herein stated and in accordance with this Invitation for Bid, General Bid Instructions and Conditions, Special Conditions and Requirements, and Exhibits listed in the table of contents of this Invitation for Bid, all of which are made a part of this offer. Signed Non-Collusion Form and documentation of CARB certification for ULSD must be submitted with offer.

All pages of Solano County Transit Invitation for Bid (IFB), including but not limited to the general terms and conditions are incorporated by reference into this IFB for all purposes. **This is a firm fixed price contract. Quantities listed on this form indicate minimum quantities used for the purpose of bid evaluation. Maximum quantities available under the terms of the contract will be the minimum quantities indicated below plus 40%. Delivery charges should be included in the unit price. In case of discrepancy between the unit prices and the total amount, the unit prices shall prevail.**

All forms required by the solicitation must be completed, signed, and submitted to SolTrans Director of Administrative Services’ Office in accordance with the Notice to Contractors on the date specified for consideration.

Description	OPIS rack avg. per Gallon	ADD ON per Gallon	DEDUCT per Gallon	Check to bid the OPIS daily avg. Rack Rate	UNIT BID PRICE PER GALLON	TWO YEAR ESTIMATED QUANTITIES	ESTIMATED TOTAL BID PRICE – 5 YEAR PERIOD
RED-DYE CARB Ultra Low Sulfur Diesel Fuel	\$ _____ Per Gallon	\$ _____ Per Gallon	\$ _____ Per Gallon	<input type="checkbox"/>	\$ _____ Per Gallon	657,389	
87 OCTANE Gasoline	\$ _____ Per Gallon	\$ _____ Per Gallon	\$ _____ Per Gallon	<input type="checkbox"/>	\$ _____ Per Gallon	25,701	

All Quantities in Gallon, All Prices in Per Gallon

ESTIMATED GRAND TOTAL BID PRICE

\$ _____

THE OFFEROR ACKNOWLEDGES RECEIPT OF AND AGREES THAT IT HAS READ AND UNDERSTOOD THE ENTIRE SOLICITATION, AND ITS PROPOSAL IS BASED ON THE SCOPE OF WORK / SPECIFICATION AND TERMS PROVIDED IN THE SOLICITATION AS MODIFIED BY THE FOLLOWING ADDENDA (IF ANY):

#1 _____ #2 _____ #3 _____ #4 _____ #5 _____ (Please Initial)

IT IS THE BIDDER’S RESPONSIBILITY TO REGISTER TO RECEIVE ADDENDA. ALL ADDENDA WILL BE EMAILED TO REGISTERED VENDORS AT LEAST THREE WORK DAYS PRIOR TO BID OPENING, WITH THE EXCEPTION OF ADDENDA ISSUED TO EXTEND THE BID DATE WHICH CAN BE ISSUED UP TO THE TIME OF BID. IN COMPLIANCE WITH THIS SOLICITATION, THE UNDERSIGNED OFFEROR HAVING EXAMINED THE INVITATION FOR BIDS AND BEING FAMILIAR WITH THE CONDITIONS TO BE MET, SUBMITS THE ATTACHED. AN INDIVIDUAL AUTHORIZED TO BIND THE COMPANY MUST SIGN THE FOLLOWING SECTION. FAILURE TO EXECUTE THIS PORTION MAY RESULT IN BID REJECTION.

IFB

In compliance with the above, the undersigned offers and agrees, if this IFB is accepted, within ninety (90) calendar days from date of opening, to furnish any or all of the items upon which prices are offered at the price set opposite each item, delivered at the designated point(s) within the time specified in the Schedule.

Name and Address of Bidder: Phone No.: E-Mail:	Signature of Person Authorized to Sign:
Date of Bid:	Please Type Signer's Name and Title:

Bid Work-Sheet

City of Vallejo – Delivery to Building 477 – Waterfront Avenue, Vallejo CA (San Francisco OPIS Daily Average Rack Rate)

The undersigned hereby proposes to furnish and deliver the goods and/or services as specified at the prices and terms herein stated and in accordance with this Invitation for Bid, General Bid Instructions and Conditions, Special Conditions and Requirements, and Exhibits listed in the table of contents of this Invitation for Bid, all of which are made a part of this offer. Signed Non-Collusion Form and documentation of CARB certification for ULSD must be submitted with offer.

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RED-DYE CARB Ultra Low Sulfur Diesel Fuel	\$ _____ Per Gallon	\$ _____ Per Gallon	\$ _____ Per Gallon	<input type="checkbox"/>	\$ _____ Per Gallon	2,400,000	

All Quantities in Gallon, All Prices in Per Gallon

ESTIMATED GRAND TOTAL BID PRICE \$ _____

THE OFFEROR ACKNOWLEDGES RECEIPT OF AND AGREES THAT IT HAS READ AND UNDERSTOOD THE ENTIRE SOLICITATION, AND ITS PROPOSAL IS BASED ON THE SCOPE OF WORK / SPECIFICATION AND TERMS PROVIDED IN THE SOLICITATION AS MODIFIED BY THE FOLLOWING ADDENDA (IF ANY):

#1 _____ #2 _____ #3 _____ #4 _____ #5 _____ (Please Initial)

IT IS THE BIDDER’S RESPONSIBIITY TO REGISTER TO RECEIVE ADDENDA. ALL ADDENDA WILL BE EMAILED TO REGISTERED VENDORS AT LEAST THREE WORK DAYS PRIOR TO BID OPENING, WITH THE EXCEPTION OF ADDENDA ISSUED TO EXTEND THE BID DATE WHICH CAN BE ISSUED UP TO THE TIME OF BID. IN COMPLIANCE WITH THIS SOLICITATION, THE UNDERSIGNED OFFEROR HAVING EXAMINED THE INVITAITON FOR BIDS AND BEING FAMILIAR WITH THE CONDITIONS TO BE MET, SUBMITS THE ATTACHED. AN INDIVIDUAL AUTHORIZED TO BIND THE COMPANY MUST SIGN THE FOLLOWING SECTION. FAILURE TO EXECUTE THIS PORTION MAY RESULT IN BID REJECTION.

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Name and Address of Bidder: Phone No.: E-Mail:	Signature of Person Authorized to Sign: Please Type Signer's Name and Title:
Date of Bid:	

LOBBYING CERTIFICATION

49 CFR PART 20--CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] 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 making lobbying contacts to 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

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

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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

SOLTRANS

“NO BID” RESPONSE FORM

NOTE: COMPLETE AND RETURN THIS FORM

ONLY IF YOU DO NOT WANT TO SUBMIT A PROPOSAL

If you do not want to submit a proposal for this requirement, we are interested in knowing why and if you want to continue receiving notice of business opportunities with SolTrans. Please remove this form, complete the requested information and return it to SolTrans. Mail to: Greg Anderson, Administration Analyst II, 555 Santa Clara Street, Vallejo, CA 94590. If you would rather FAX your response, the FAX number is (707) 648-4691. If you have any questions, please call (707) 648-5288. Thank you for your cooperation.

“NO BID” QUESTIONNAIRE

(Please complete all items that apply)

We do not sell product/services called for in this request for quotation, but **we want to stay on SolTrans’s Bid List.** Please send necessary information so that the products/services we do provide can be updated on SolTrans’s Bid List.

We are not interested in doing business with Solano County Transit, because

Other reasons/comments: _____

(Business Name)

Date: _____

(Street Address/P.O. Box)

Phone: _____

(City, State, Zip)

Contact: _____

Special Terms and Conditions TABLE OF CONTENTS

Federally Required Contract Clauses

Energy Conservation - 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. The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

3. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

4. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

5. FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract. The Federal Changes requirement flows down appropriately to each applicable changed requirement.

No Obligation by the Federal Government.

(1) The Purchaser 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 Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions. Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) 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.

(2) 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. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

(3) 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.

Suspension and Debarment - This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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 the City of Vallejo. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City of Vallejo, 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 49 CFR 29, Subpart C 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.

Civil Rights - The following requirements apply to the underlying contract:

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and 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, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 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. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 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.

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

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Disadvantaged Business Enterprises -

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall Annual Anticipated Level of DBE Participation is **3 %**. A separate contract goal **has not** been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. 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 City of Vallejo deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The agency shall hold retainage from the prime contractor and provide for prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30-days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

e. The contractor must promptly notify the City of Vallejo, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without notification to the City of Vallejo.

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Vallejo requests which would cause the City of Vallejo to be in violation of the FTA terms and conditions. The incorporation of FTA terms has unlimited flow down.