



METROPOLITAN TRANSIT AUTHORITY

INVITATION FOR BIDS (IFB)

FOR

PURCHASE OF ULTRA LOW SULFUR DIESEL (OPIS)

METRO IFB NO. 4022000136

Bidder's signature on Invitation for Bids (Section II – Forms for Bidding/Award) constitutes acceptance of a contract that may result from this solicitation. Contract award/execution may be made by METRO without discussion.

METRO FUNDING 100%

IMPORTANT – Notice to Bidder

All responses to this solicitation must be labeled as indicated below and delivered or mailed to the following address:

Metropolitan Transit Authority
Procurement Division
Plan Room, 2nd Floor
1900 Main Street
Houston, Texas 77002

Upper Left Corner of Envelope Must Indicate:
Bidder/Contractor Name and Address

Lower Left Corner of Envelope Must Indicate:
Solicitation Number
Due Date
Due Time
Solicitation Title

**METRO does not accept electronic bid/proposal submissions.
Only physical, hardcopy documents are accepted.**

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SECTION I - BIDDING REQUIREMENTS AND INSTRUCTIONS

1 INVITATION FOR BIDS SUMMARY

IFB NO.: 4022000136

IFB ISSUE DATE: June 23, 2022

PROJECT NAME: Purchase of Ultra Low Sulfur Diesel (OPIS)

ISSUED BY: Metropolitan Transit Authority of Harris County (METRO)

SUBMIT INQUIRIES BY WRITING OR CALLING:

METROPOLITAN TRANSIT AUTHORITY
Procurement Division
1900 Main Street
Houston, Texas 77002

NAME: Blake Hohensee
TITLE: Sr. Contract Administrator
TELEPHONE: (713) 739-4860
E-MAIL: jh52@ridemetro.org

METRO Procurement Web site: <https://www.ridemetroapp.org/procurement/>

NOTE TO BIDDERS: BIDDERS ARE RESPONSIBLE FOR ALL INFORMATION IN THIS SOLICITATION, HOWEVER, PLEASE PAY PARTICULAR ATTENTION TO INFORMATION SHADED IN GRAY.

BID OPENING TIME/LOCATION: Sealed bids for work described must be submitted to METRO Procurement Plan Room, 1900 Main Street, Houston, Texas 77002 received by 2:00 p.m. local time on Wednesday, July 06, 2022. Please mark Attention: Procurement Plan Room with the IFB Number on the package. Bids will be opened publicly, read aloud and recorded at 10:00 a.m. on Thursday, July 07. You may attend via the TEAMS Meeting below.

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

[+1 281-925-7469](tel:+12819257469) United States, Houston

Phone Conference ID: [246 022 158#](#)

APPROVAL OF CONTRACT: If required by the METRO Procurement Manual, award of a contract evolving from this solicitation shall be contingent upon the prior receipt of written approval from the METRO Board of Directors. No contractual agreement shall be binding on METRO until this approval has been obtained. It shall be the responsibility of firms responding to this solicitation to monitor Board award decisions. All persons and/or entities responding to this solicitation hereby acknowledge the contract award requirement enumerated in this Paragraph. Anticipated Board Items are posted on METRO's web site at <https://www.ridemetro.org/Pages/BoardMeetingsAndNotices.aspx>

The City of Houston may also decide to award contracts from this solicitation/resulting contract(s). **The City of Houston** estimated volumes are listed on page 4. (METRO's estimated volumes are listed on page 3.)

BID EVALUATION AND AWARD: For the purposes of award, METRO will consider the fixed differential of individual items. One award of a firm fixed price contract will be made to the responsive responsible bidder whose bid conforms to the requirements of this Solicitation. The lowest price bidder is not guaranteed that it will receive the METRO contract award.

METRO reserves the right to reject any and all bids, to waive any informalities in bids received and the right to reject all nonconforming, non-responsive or conditional bids. Unless stated elsewhere in this solicitation, the bidding of equivalents is not permitted and will be cause for bid rejection. Alternate/multiple bids will not be considered. Bids in which prices are obviously unbalanced may be rejected. Bids containing apparent clerical mistakes such as discrepancy between unit bid price and the price extension or the sum of the extended amounts and the total bid price, or other apparent clerical mistakes, will be resolved by the Contract Administrator in accordance with the 'Errors in Bids' procedures contained in METRO's Procurement Manual in Chapter 4.

CONFLICTS DISCLOSURE: Vendors doing business with METRO or seeking to do business with METRO are required to file a completed questionnaire (FORM CIQ) disclosing the vendor's affiliations or business relationship with any Board Member, local government officer (or his or her family member). Form CIQ is available on METRO's website at <https://www.ridemetro.org/Pages/ConflictsDisclosure.aspx>.

DIRECTIONS FOR SUBMITTING BIDS: Bids shall be submitted by delivery or mail in a sealed envelope to the location shown above and on the cover page of this Solicitation, and clearly marked as indicated. Bids not identified as instructed may result in the premature

opening of, or failure to open a bid. METRO must receive a bid no later than the time and date indicated in the Paragraph above. Electronic, facsimile (fax) or emailed bids are not authorized.

DISCOUNTS: No discounts for prompt payment will be considered in the evaluation of bids.

DISPUTES: Resolution of any dispute between METRO and the Contractor after award of the Contract can be resolved using one of the following methods: 1) Internal METRO Contract Disputes Appeals Committee consisting of three METRO individuals (not associated with the Contract) to hear the dispute and make a recommendation to the President & Chief Executive Officer; or, 2) Outside third-party non-binding arbitration for which the cost is shared equally by METRO and the Contractor. The bidder should select on the bid/award form which method to be used. The METRO Contract Disputes Appeals Committee method shall be used if the bidder fails to select a method. The full text of these dispute resolution methods are contained in METRO's Procurement Manual and a copy is available upon request from the Contract Administrator identified above.

EXPLANATION TO BIDDER/AMENDMENTS: Any explanation desired by a bidder regarding the meaning or interpretation of this Solicitation must be requested in writing and received by METRO **at least seven (7 days) calendar days before the date set to receive bids**. METRO's response will be issued as an amendment and will be furnished to all prospective bidders. METRO may also issue amendments when a solicitation is changed.

The bidder must acknowledge receipt of every amendment issued by METRO in the space provided on the amendment form itself and submit a signed copy of all amendments with the bid, or send a letter of amendment acknowledgement to be received by METRO before the time set for opening of bids. Oral explanations or instructions given before the award of the contract will not be binding.

FEDERAL FINANCIAL ASSISTANCE: Should this procurement be subject to the availability of federal financial assistance from the Federal Transit Administration (FTA), all federal requirements such as Buy America, Cargo Preferences, and Restriction on Lobbying will be included in the resultant Contract. Refer to Section II - Forms for Bidding/Proposing and submit with bid. Failure to submit these Forms may make your bid non-responsive.

LATE BIDS, MODIFICATION OR WITHDRAWAL OF BIDS: Any bid or modification of bid received at the METRO office designated in the Invitation for Bids after the exact time specified for receipt will not be considered for award of a contract. Late bids received will be retained unopened and filed with unsuccessful bids in the official contract file.

OTHER BIDDING INFORMATION: This Solicitation is issued in accordance with METRO's Competitive Bidding Procedures. Any question(s)/issue(s) which may arise not specifically addressed herein will be decided and resolved in accordance with these METRO procedures.

PREPARATION OF BID:

1. A bid shall be submitted on the forms furnished by METRO or re-produced copies of METRO forms; shall be completed in ink or by typewriter and shall be manually or digitally signed. If erasures or other changes appear on the forms, each erasure or change shall be initialed by the person signing the bid. 'Telegraphic or facsimile (fax) bids are not authorized.
2. The 'Solicitation, Bid and Award' form may provide for submittal of a price or prices for one or more items, which may be lump sum bids, alternative prices, scheduled items resulting in a bid on a unit price, lump sum or a combination thereof. Where the Bid form explicitly requires that the bidder bid on all items, failure to do so will disqualify the bid. When submittal of a price on all items is not required, a bidder shall insert the words 'no bid' in the space provided for any item on which no price is submitted.
3. If a bid is from an individual, sole proprietorship, or a bidder operating under a trade name, the bid shall be signed by that individual.
4. A bid by a partnership shall be executed in the partnership name and signed by a partner; the official address of the partnership shall be shown where indicated on the 'Solicitation, Bid and Award' form.
5. A bid by a corporation shall be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal shall be affixed and attested by the corporate secretary or assistant secretary.
6. A bid submitted by a joint venture shall list the names of all joint venturers and the mailing addresses of each and shall be executed by all joint venturers in the same manner as if they were individually submitting bids. The signature portion of the Bid Form shall be altered as appropriate for execution by the joint venture and all joint venturers.
7. All names shall be typed or printed below the signature.
8. The bid shall contain an acknowledgment of receipt of all amendments to the solicitation.
9. Communications regarding this solicitation are to be directed to the address and to the attention of the person shown in this Invitation for Bids document.

10. Unless called for, alternative bids will not be considered.

PROHIBITION ON LOBBYING: No bidder shall, directly or indirectly, engage in any conduct (other than the submission of the bid or other prescribed submissions and/or presentations before the Evaluation or Selection Committees) to influence any employee of METRO or any member of the Metropolitan Transit Authority Board of Directors concerning the award of a contract as a result of this solicitation. Violation of this prohibition may result in disqualification of the bidder from further participation in the solicitation for the services or goods sought herein or from participation in future METRO solicitations or contracts. **The communication blackout period shall commence from the issue of a solicitation through contract award. The Contract Administrator is the only METRO representative authorized to communicate with firms or their representatives during the blackout period.**

PROTESTS: A complete copy of the protest procedures can be obtained by submitting a written request to the Contract Administrator for this solicitation. Each protest or objection to the solicitation documents shall be submitted for resolution to the Chief Procurement Officer. Each such protest shall be in writing and shall be supported by sufficient information as set forth in Chapter 12 of METRO's Procurement Manual to enable the protest to be considered. A protest or objection based upon restrictive specifications, alleged improprieties, terms, conditions or form of a proposed procurement action prior to bid opening, shall be submitted so that it is received by METRO no later than five (5) calendar days prior to the specified bid opening date. A protest concerning award decisions, including bid evaluations, shall be submitted so that it is received within five (5) calendar days after the interested party knows, or through exercise of reasonable diligence should have known, whichever is earlier, of the grounds for the protest, following bid opening. The protester must exhaust its administrative remedies by pursuing METRO's protest procedures to completion prior to appealing METRO's decision to the Federal Transportation Administration (FTA).

PUBLIC NOTICE OF SOLICITATION RESULTS: The anticipated METRO Board meeting month for approval of a contract resulting from this solicitation will be forthcoming. It is the responsibility of the bidder to check METRO's website for notices on the specific dates for METRO Board meetings. All bidders of this solicitation and METRO hereby agree that this provision shall serve as the minimum required action by the bidder toward exercising due diligence in obtaining the results of this solicitation. The requirement of approval by the METRO Board of Directors for any particular solicitation is dependent upon several factors. However, all bidders shall be required to check the METRO web site regarding whether or not the solicitation associated with their bid requires approval by the METRO Board of Directors. All persons and/or entities responding to this solicitation hereby acknowledge the public notice of solicitation results enumerated in this Paragraph. METRO Board meeting notices are posted on METRO's website at: <https://www.ridemetro.org/Pages/BoardMeetingsAndNotices.aspx>

REGISTRATION ON PROCUREMENT WEBSITE: All bidders/proposers MUST register on METRO's procurement website at <https://www.ridemetroapp.org/procurement/> to ensure that they receive the latest solicitations and updates via their registered e-mail address.

RESPONSIBLE BIDDER DETERMINATION: Responsible bidders at a minimum must:

- a) Have financial resources adequate to perform the Contract, or ability to obtain such resources as required during the performance of the Contract;
- b) Be able to comply with providing the required volumes of fuel, taking into consideration all existing business commitments;
- c) Have a satisfactory record of current and/or past performance consistently providing fuel of the volumes specified herein to a single customer for a period of 5 years.
- d) Have necessary technical and management capability to perform;
- e) Have a satisfactory record of business integrity and ethics;
- f) Certify that it is not on the U.S. General Services Administration's 'Lists of Parties Excluded from Federal Procurement or Non-procurement Programs.' Signing and submitting the bid is so certifying;
- g) Be qualified as an established firm regularly engaged in the type of business to provide the items/work required by this Solicitation; and,
- h) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.
- i) Be a fuel producer with prominent presence at racks in the Houston area.

A bidder may be requested to submit written evidence verifying that they meet the minimum criteria necessary to be determined as responsible bidder. Refusal to provide requested information will result in the bidder being declared non-responsive, and the bid will be rejected.

SMALL BUSINESS PARTICIPATION GOAL: METRO has adopted a Small Business Enterprise Program to encourage the participation of Small Business enterprises in contracting activities through race-gender neutral means. METRO sets Small Business Participation goals on its contracts. Small Business Participation goals can be satisfied by METRO-certified Small Businesses (SBE), Texas Unified Certification Program (TUCP)-certified Disadvantaged Business Enterprises (DBE), or a combination of both. All references to Small Businesses in this document include Disadvantaged Business Enterprises. This solicitation has a N/A% Small Business Participation goal. Copies of METRO's Small Business Program can be obtained upon request.

TAXES: METRO is exempt from payment of Federal Excise and Transportation Tax and the Texas Limited Sales, Excise and Use Tax. The Contractor's invoice(s) shall not contain assessments of any of these taxes.

2 SUMMARY OF BID FORMS SUBMISSION

Insert requested information and sign and date where indicated.

SUBMIT WITH COMPLETED BID

'Signed Bid and Award' form	Section II, Article 1, with selected Dispute Resolution Process
'Bid/Contract Amount, Items and Prices' form	Section II, Article 2
'Certification of Restrictions on Lobbying' form	Section XI, Exhibit C
'Debarment and Suspension Certification' form	Section XI, Exhibit D
Selected Method of 'Disputes Resolution Process'	Section IX, Article 9, with selected process box initialed
Amendments (if issued)	

SUBMIT ONLY IF APPLICABLE

Evidence of attainment of proper license or permit, if special licensing or permitting is required by federal, state or local law or ordinance.

SECTION II - FORMS FOR BIDDING/AWARD

1 BID AND AWARD FORM

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY TEXAS - INVITATION FOR BIDS

For: Purchase of Ultra Low Sulfur Diesel (OPIS)

ACKNOWLEDGMENT OF RECEIPT OF BID AMENDMENT(S) (Give number and date of each):

No./Date	No./Date	No./Date	No./Date	No./Date
----------	----------	----------	----------	----------

OFFER (To be completed by Offeror)

In compliance with the above-referenced Invitation for Bids, the undersigned agrees, if this offer is accepted within one hundred twenty (120) calendar days from receipt of bids, to furnish any or all items listed in Section II, 'Bid/Contract Amount, Items and Prices,' upon which prices are offered. The undersigned further agrees to deliver at the designated delivery point and within the time specified in Section III.

This solicitation consists of Sections I through VIII. The resulting contract will consist of this form and Sections II through VIII.

By signing this bid, the bidder/contractor represents the following: (1) the business/company contracting with METRO is in good standing with the state of Texas; (2) the business/company is authorized to transact business in the state of Texas; and (3) the business/company does not have any outstanding debts (including, but not limited to, tax liens) that affect Contractor's ability to transact business in the state of Texas. If requested by METRO, the bidder/contractor shall provide METRO proof to support the above representations.

DISPUTE RESOLUTION PROCESS: SMALL BUSINESS PROGRAM (SBP): DISCOUNT FOR PROMPT PAYMENT:

__ METRO Contract Disputes Appeal Committee ___% SB Participation Goal ___% 10 DAYS ___% __ DAYS

OFFERER COMPANY NAME AND ADDRESS:

EMAIL: _____

PHONE: () _____ FAX NO.: () _____

SIGNATURE OF OFFEROR:

By: _____
(MUST BE SIGNED BY AUTHORIZED PERSON)

NAME: _____

TITLE: _____

DATE: _____

AWARD (To be completed by METRO)

SUBMIT INVOICES TO:

Metropolitan Transit Authority of Harris County
Attention: Accounts Payable, 5th Floor
P.O. Box 61429, Houston, TX 77208-1429

CONTRACT NO.: _____

APPROVED BY:

ITEM NO. AWARDED: _____

NAME: _____

Michael Kyme

TITLE: Chief Procurement Officer

AWARD AMOUNT: _____

NAME: _____

Debbie Sechler

TITLE: Executive Vice President, Administration

BUDGET NO.: _____

PROJECT MANAGER: _____

NAME: _____

George Fotinos

TITLE: Interim Chief Financial Officer

APPROVED AS TO FORM:

ATTEST:

NAME: _____

Cydonii Fairfax

TITLE: Executive Vice President & General Counsel

TITLE: Assistant Secretary

2 BID/CONTRACT AMOUNT, ITEMS AND PRICES

Bidder shall provide all necessary resources to supply fuel in accordance with the specifications listed for the items at the bid prices below.

The Contractor shall provide Ultra Low Sulfur Diesel from fuel racks located within 25 miles of any METRO facility listed in Section III, List of METRO Facilities. Withdrawal of fuel will begin October 1, 2022, for 36-month requirements type Contract. Yearly volume of fuel is estimated according to Section III, Estimated Volume. Fuel shall be available to be loaded to fuel trailers 24 hours a day, 7 days a week, 365 days a year. The wait time to load fuel at the rack shall not exceed 2 hours. Transportation of fuel to METRO facilities is not requested for this solicitation.

The Contractor shall be a fuel producer with prominent presence at the primary racks location from which fuel will be obtained. The Contractor shall provide METRO with a fixed primary rack position for the duration of the contract and be able to consistently provide the fuel volumes specified herein. The Contractor shall also have a backup rack location that must be able to supply fuel when the primary location is down more than 1 hour during a 24-hour period. (METRO will not award a contract to a Contractor that will require METRO to load fuel from different rack locations from day to day.

Resultant Contract pricing will be based on the corresponding OPIS Price Index below plus the corresponding Fixed Differential Amount, plus the applicable State taxes. Note: METRO is exempt from paying Federal Fuel taxes.

Item No. 1 - Ultra Low Sulfur Diesel as specified in Exhibit "A"

OPIS PRICE INDEX: OPIS CONTRACTS – HOUSTON, TX 10:AM EASTERN Time Edition, Ultra Low Sulfur Diesel per gallon the day fuel is lifted from the rack.

BID FIXED DIFFERENTIAL AMOUNT per gallon shall include all applicable fees for all additives necessary for the fuel to meet the Ultra Low Sulfur Diesel specifications of Exhibit "A" and transport fees to METRO facilities. The BID FIXED DIFFERENTIAL AMOUNT (B) shall not include any taxes. The differential shall be no more than 4 decimal places.

(A) OPIS PRICE INDEX PER GALLON (hypothetical)	(B) BID FIXED DIFFERENTIAL AMOUNT PER GALLON (PLUS or MINUS)	(C) ESTIMATED APPLICABLE TAXES & PETROLEUM PRODUCT DELLIVERY FEE PER GALLON	(D) TOTAL BID UNIT PRICE PER GALLON
\$1.7240	(+/-) \$	(+) \$0.2062	= \$X.XXXX

METRO will accept ULSD without any biofuel or with up to 5% biofuel.

SECTION III - DELIVERIES OR PERFORMANCE ARTICLES

1 DEFINITIONS

- A. 'METRO' shall mean Metropolitan Transit Authority of Harris County, Texas.
- B. The term 'President & Chief Executive Officer' means the President & Chief Executive Officer of the Metropolitan Transit Authority and the term 'the duly authorized representative' means any person specifically authorized to act for the President & Chief Executive Officer. These representatives are authorized to obligate METRO by executing this Contract, and any modification thereto.
- C. The term 'Contracting Officer' means the Contract Administrator who has been designated the responsibility, by the METRO Chief Procurement Officer, for overall administration of the contract, excluding the execution of contract modifications.
- D. The term 'METRO Project Manager' means the technical representative who has been designated to act on behalf of METRO in monitoring and assessing the Contractor's services and/or technical performance and progress; inspecting and periodically reporting on such performance and progress during the stated period of performance, and finally certifying as to the acceptability of the contract Work in its entirety or any portion thereof, as required by the contract documents.
- E. Depending on the disputes resolution process selected by the Contractor at the time of bidding:
 - 1. The term 'Contract Disputes Appeals Committee' means the METRO administrative body designated by the President & Chief Executive Officer to hear a Contractor's appeal submitted under the 'Disputes' Article of this Contract.
 - 2. The term 'Arbitrator' means the individual selected by both METRO and the Contractor to hear an appeal submitted under the 'Disputes' Article of this Contract.
- F. The term 'Work' means all construction, labor, materials, equipment, and contractual requirements as specified, or indicated in the Contract documents, including all alterations, amendments, or extensions thereto made by authorized changes.
- G. The term 'Contractor' shall mean the individual, partnership, corporation, organization, or association contracting with METRO to furnish all materials, goods and work defined herein. As may be used herein, the terms 'Contractor' and 'Consultant' are synonymous.
- H. The term 'subcontract' means any agreement including purchase orders (other than one involving an employer employee relationship) entered into between the Contractor and a subcontractor calling for services, labor, equipment, and/or materials required for Contract performance, including any modifications thereto.
- I. The terms 'subcontractor' and 'subcontractor and supplier' mean any individual, partnership, firm, corporation or joint venture that contracts with the Contractor to furnish services, labor, equipment and/or materials under this Contract. As used herein, the terms 'subcontractor' and 'subcontractor and supplier' are synonymous.

2 CONTRACT PERIOD

The performance period for this Contract shall be from October 01, 2022 through September 30, 2025 ("Primary Term"), unless otherwise extended or terminated by METRO in accordance with the terms and conditions of this Contract.

3 ESTIMATED VOLUMES

The METRO estimated volume of fuel shall be plus (+) or minus (-) 20% of the following. These are estimated volumes and METRO shall not be held responsible if lesser volumes are purchased.

Ultra Low Sulfur Diesel
9,421,760 gallons Oct. 2022 – Sep. 2023
10,363,936 gallons Oct. 2023 – Sep. 2024
10,778,493 gallons Oct. 2024 – Sep. 2025

The City of Houston may also decide to award contracts from this solicitation/resulting contract.

The City of Houston estimated volume of fuel would be plus (+) or minus (-) 20% of the following:

Ultra Low Sulfur Diesel

2,953,485 gallons Oct. 2022 – Sep. 2023

3,027,322 gallons Oct. 2023 – Sep. 2024

3,103,005 gallons Oct. 2024 – Sep. 2025

4 LIST OF METRO FACILITIES

Contractor's primary fuel racks location and backup racks location must be within 25 miles of any one of the following METRO facilities.

Kashmere Bus Operating Facility (BOF)
5700 Eastex Freeway
Houston, Texas 77026

Polk BOF
5700 Polk
Houston, Texas 77023

Northwest BOF
5555 Deauville Plaza
Houston, Texas 77092

West BOF
11555 Westpark Dr.
Houston, Texas 77082

Hiram Clarke BOF
4175 Uptown Dr.
Houston, TX 77084

Field Service Center
1215 Labco
Houston, TX 77045

Fallbrook BOF
111 Fallbrook Drive
Houston, Texas 77038
Northwest BOF
555 Deauville Lot
Houston, TX 77092

5 TEXAS ETHICS COMMISSION (TEC) ELECTRONIC FILING

In the event this Contract requires the approval of METRO's Board of Directors, the Contractor shall submit to METRO, after notification that METRO's Board has authorized the Contract and prior to final execution of the Contract, a completed, signed and notarized Form 1295 generated by the Texas Ethics Commission's (the TEC) electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (a *Form 1295*). The Contractor hereby confirms and agrees to submit such forms with the TEC through its electronic filing application at: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

SECTION IV - INSPECTION AND ACCEPTANCE ARTICLES

Not Applicable

SECTION V - CONTRACT ADMINISTRATION DATA ARTICLES

1 COMPENSATION

- A. The Contractor shall be compensated for the items ordered and accepted at the firm fixed unit prices as provided in the Bid/Contract Amount, Items and Prices of this Contract.
- B. METRO's total obligation for the satisfactory performance of this Contract shall not exceed _____ and no/100 Dollars (\$_____.00), less any prompt payment discount earned or set forth in paragraph C, and in accordance with the payment provisions of this Contract.
- C. Payment terms are net 10 calendar days. Payment shall be considered to have been made on the date that an electronic funds transfer was made.
- D. The Contract price is not subject to any adjustment should METRO not order the full quantity described as estimated.

2 NOTICES

All notices to either party by the other shall be delivered personally or sent by U.S. registered or certified mail, postage prepaid, addressed to such party at the following respective addresses for each:

Authority: Blake Hohensee _____
 Contracting Officer
 METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS
 1900 Main St., 8th Floor
 Houston, Texas 77002

Contractor: _____

and shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change of address to the other in the manner provided for above.

SECTION VI - INSURANCE ARTICLES

- 1. INDEMNIFICATION AGREEMENT**
- A. CONTRACTOR AGREES, COVENANTS AND WARRANTIES THAT IT WILL INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS METRO, ITS EMPLOYEES, OFFICERS AND LEGAL REPRESENTATIVES (COLLECTIVELY "METRO") FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS AND LIABILITY, INCLUDING DEFENSE COSTS RELATING IN ANY WAY TO DAMAGES, CLAIMS OR FINES ARISING BY REASON OF OR IN CONNECTION TO DAMAGES, CLAIMS OR FINES ARISING BY REASON OF OR IN CONNECTION WITH CONTRACTOR'S ACTUAL NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CONTRACTOR IN CONNECTION WITH OR DURING THE PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT.**
- B. THE INDEMNITY PROVISION PROVIDED HEREIN SHALL HAVE NO APPLICATION TO ANY CLAIM OR DEMAND WHEREBODILY INJURY, DEATH OR DAMAGE RESULTS FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF METRO OR THAT OF THIRD PARTIES.**
- C. NOT WITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIABILITY OF THE CONTRACTOR UNDER THIS SECTION SHALL NOT EXCEED \$600,000 PER OCCURRENCE.**

SECTION VII - SMALL BUSINESS PROGRAM ARTICLES

The METRO Board of Directors have approved a Small Business Program that applies to all METRO contracts, whether Federal or non-Federal. Each contract will be reviewed for application of the policy and a subcontracting goal will be applied where applicable. METRO's policy is to promote equal opportunity and nondiscrimination in all of its procurement matters in accordance with State and Federal laws. The Program operates in a **race and gender neutral** manner and is open to participation without regard to race, color, sex, religion, national or ethnic origin, age or disability. The Program will utilize procedures that promote inclusion and opportunity, while maintaining race and gender neutral measures in their operations.

In regards to federally funded contracts, METRO adheres to the Federal Disadvantaged Business Enterprise (DBE) Program. This Program ensures that DBEs as defined in 49 CFR, Part 26 have an equal opportunity to receive and participate in Department of Transportation (DOT)-assisted contracts through race-neutral means. The DBE Program will be applied as applicable.

METRO's Small Business Program and Disadvantaged Business Enterprise (DBE) Program are available upon request.

SECTION VIII - SPECIAL TERMS AND CONDITIONS ARTICLES

1 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

METRO's obligation for performance of this Contract is contingent upon availability of funds from which payment for contract purposes can be made. No liability on the part of METRO for any payment may arise under this Contract until funds are made available for performance and until the Contractor receives notice of availability, in writing, from the Contracting Officer. Any option exercised by METRO that will be performed in whole or in part in a subsequent fiscal year is subject to availability of funds in the subsequent fiscal year and is governed by the terms of this Article.

2 INTER-LOCAL/COOPERATIVE PURCHASE

The Contractor agrees that any agreement inclusive of pricing resulting from this solicitation is extended to other public entities (e.g., state agency, local government, state of Texas educational institutions) authorized by state law to participate under cooperative procurement contracts or Inter-local Agreements with the following understandings:

- A. Unless specifically stated otherwise, any volume of products or services stated in this Contract document reflects only products or services to be purchased by METRO and does not include potential purchases by other entities.
- B. The Contractor shall establish a direct relationship with each entity concerning the placement of orders, issuance of the purchase order, contractual disputes, invoicing, payment and all other matters relating or referring to such entity's access to the agreement.
- C. Each entity is a financially separate entity and shall be solely responsible for the financial commitments of that entity.
- D. METRO shall not be held liable for any costs, damages or other obligations incurred by any participating entity.
- E. It is the entity's decision whether or not to enter into an agreement with the Contractor.
- F. Any purchases made by an entity shall be in accordance with each entity's purchasing policy and procedures

3 EMERGENCY FUEL SUPPLY PROVISIONS

METRO Only

The Contractor shall guarantee, subject to Section IX, Article 11 - Force Majeure, that METRO or its assignees (fuel transport carriers) will be able to withdraw a minimum of 200,000 gallons of Ultra Low Sulfur Diesel per week during hurricanes or similar emergencies over a 30 calendar day period following the event. Should a United States Federal agency waive restrictions on different types of fuel during or following a hurricane or similar emergency, the Contractor shall be allowed to substitute a suitable alternative fuel if the Contractor has a shortage of the fuel specified for this contract. The fuel supplied for hurricane or similar emergencies shall be priced according to the Contract.

City of Houston Only

Should the City of Houston decide to award a contract from this solicitation/resulting contracts the following would apply to their contract.

The Contractor shall guarantee, subject to Section IX, Article 11 - Force Majeure, that City of Houston or its assignees (fuel transport carriers) will be able to withdraw a minimum of 72,000 gallons per week of Ultra Low Sulfur Diesel during hurricanes or similar emergencies over a 30 calendar day period following the event. Should a United States Federal agency waive restrictions on different types of fuel during or following a hurricane or similar emergency, the Contractor shall be allowed to substitute a suitable alternative fuel if the Contractor has a shortage of the fuel specified for this contract. The fuel supplied for hurricane or similar emergencies shall be priced according to the Contract.

SECTION IX - GENERAL TERMS AND CONDITIONS ARTICLES

1 ACCEPTANCE

Award of this Contract by METRO constitutes a binding contract subject to the terms and conditions set forth herein.

2 ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

The Contractor agrees to comply with, and assures that any subcontractor or any other third-party Contractor under this Contract complies with, all applicable requirements regarding Access for Individuals with Disabilities contained in the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301(d); and any other applicable federal regulations, including any amendments thereto.

Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

3 ASSIGNMENT

The rights and obligation of the Parties under this Contract may not be transferred, assigned, subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way without other Party's prior written consent, which shall not be unreasonably withheld.

4 CHANGES

A. The President & Chief Executive Officer or the duly authorized representative may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes within the general scope of the contract, including any one or more of the following:

1. Specifications or Description of services to be performed,
2. Time of performance (i.e., hours of day, days of the week, etc.),
3. Place of performance of the services,

B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, whether or not changed by the order, the President & Chief Executive Officer or the duly authorized representative shall make an equitable adjustment in the Contract price, the time of performance, or both, and shall modify the Contract.

C. The Contractor must submit any 'proposal for adjustment' under this Article within thirty (30) calendar days from the date of receipt of the written order. However, if the President & Chief Executive Officer or the duly authorized representative decides that the facts so justify, the President & Chief Executive Officer or the duly authorized representative may receive and act upon a proposal submitted before final payment of the Contract.

D. Failure to agree to any adjustment shall be a dispute under the 'Disputes' Article of this Contract. However, nothing in this Article shall excuse the Contractor from proceeding with the Contract as changed.

E. Except for those changes properly authorized and executed as provided in this Article, the Contractor shall notify the Contracting Officer in writing promptly within fifteen (15) calendar days from the date that the Contractor identifies any METRO conduct (including actions, inactions and written or oral communications) that the Contractor regards as a change to the Contract terms and conditions. This notification shall contain all information available to the Contractor regarding the change. Contractor's failure to provide notification as required herein may jeopardize being compensated for the change if in fact a change has been made.

F. The parties agree that the terms and conditions of this Contract may only be modified and/or amended by mutual agreement between the parties. Said mutually agreed upon amendment and/or modification shall be written and executed by both parties prior to becoming effective.

5 CONTRACT ORDER OF PRECEDENCE

In the event of an inconsistency between provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following order:

1. Contract Modifications, if any
2. Contract Articles;
3. Scope of Services

4. Technical Specifications;

5. Drawings

6 CONTRACTOR NONDISCRIMINATION

The Contractor or subcontractor(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as METRO deems appropriate.

7 DISSEMINATION OF CONTRACT INFORMATION

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the performance of this Contract, without prior written consent of METRO's President & Chief Executive Officer. Two (2) copies of any material proposed to be published or distributed shall be submitted to the METRO President & Chief Executive Officer through the Contracting Officer.

8 DISPUTES

The dispute method listed below as selected by the Contractor on the 'Bid and Award' form, Section II, Article 1 will apply. If the Contractor did not select a dispute method on the Bid and Award form with the submission of its bid, the METRO Contract Disputes Appeals Committee method shall apply.

METRO CONTRACT DISPUTES APPEAL COMMITTEE

Any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement will be decided by the Contracting Officer, who will reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer will be final unless, within ten (10) calendar days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the METRO Contract Disputes Appeals Committee. The Contract Disputes Appeals Committee will be designated by the President & Chief Executive Officer and will hear the Contractor's appeal and make a recommendation to the President & Chief Executive Officer for the final decision. In connection with any appeal proceeding under this Article, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of his appeal. The decision of the President & Chief Executive Officer will be final and conclusive with respect to the Contractor's administrative remedies under this Disputes Article. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's decision. This Disputes Article does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Contract, however, shall be construed as making final the decision of any administrative official, representative, or committee on a question of law.

9 EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS³

³The definitions set forth in 41 CFR 60-300.2 apply to the terms used throughout this Clause, and they are incorporated herein by reference.

- A. The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran (hereinafter collectively referred to as 'protected veteran(s)') in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices, including the following:
1. Recruitment, advertising, and job application procedures.
 2. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.
 3. Rates of pay or any other form of compensation and changes in compensation.
 4. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
 5. Leaves of absence, sick leave, or any other leave.
 6. Fringe benefits available by virtue of employment, whether or not administered by the Contractor.
 7. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.
 8. Activities sponsored by the Contractor including social or recreational programs.
 9. Any other term, condition, or privilege of employment.
- B. The Contractor agrees to immediately list all employment openings which exist at the time of the execution of this Contract and those which occur during the performance of this Contract, including those not generated by this Contract and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, with the appropriate employment service delivery system where the opening occurs. Listing employment openings with the state workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service delivery system. In order to satisfy the listing requirement described herein, Contractors must provide information about the job vacancy in any manner and format permitted by the appropriate employment service delivery system which will allow that system to provide priority referral of veterans protected by VEVRAA for that job vacancy. Providing information on employment openings to a privately run job service or exchange will satisfy the Contractor's listing obligation if the privately run job service or exchange provides the information to the appropriate employment service delivery system in any manner and format that the employment service delivery system permits which will allow that system to provide priority referral of protected veterans.
- C. Listing of employment openings with the appropriate employment service delivery system pursuant to this Clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a *bona fide* job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in executive orders or regulations regarding nondiscrimination in employment.
- D. Whenever a Contractor, other than a state or local governmental Contractor, becomes contractually bound to the listing provisions in Paragraphs 2 and 3 of this Clause, it shall advise the employment service delivery system in each state where it has establishments that: (a) it is a federal Contractor, so that the employment service delivery systems are able to identify them as such; and (b) it desires priority referrals from the state of protected veterans for job openings at all locations within the state. The Contractor shall also provide to the employment service delivery system the name and location of each hiring location within the state and the contact information for the Contractor official responsible for hiring at each location. The 'Contractor Official' may be a chief hiring official, a Human Resources contact, a senior management contact, or any other manager for the Contractor who can verify the information set forth in the job listing and receive priority referrals from employment service delivery systems. In the event that the Contractor uses any external job search organizations to assist in its hiring, the Contractor shall also provide to the employment service delivery system the contact information for the job search organization(s). The disclosures required by this Paragraph shall be made simultaneously with the Contractor's first job listing at each employment service delivery system location after the effective date of this final rule. Should any of the information in the disclosures change since it was last reported to the employment service delivery system location, the Contractor shall provide updated information simultaneously with its next job listing. As long as the Contractor is contractually bound to these provisions and has so advised the employment service delivery system, there is no need to advise the employment service delivery system of subsequent contracts. The Contractor may advise the employment service delivery system when it is no longer bound by this Contract

clause.

- E. The provisions of Paragraphs B and C of this Clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.
- F. As used in this Clause:
1. *All employment openings* includes all positions except executive and senior management, those positions that will be filled from within the Contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.
 2. *Executive and senior management* means: (1) Any employee (a) compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the federal government), exclusive of board, lodging or other facilities; (b) whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (c) who customarily and regularly directs the work of two or more other employees; and (d) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight; or (2) any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.
 3. *Positions that will be filled from within the Contractor's organization* means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the Contractor proposes to fill from regularly established 'recall' lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.
- G. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- H. In the event of the Contractor's noncompliance with the requirements of this Clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- I. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the Contracting Officer. Such notices shall state the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are protected veterans. The Contractor must ensure that applicants or employees who are disabled veterans are provided the notice in a form that is accessible and understandable to the disabled veteran (e.g., providing Braille or large print versions of the notice, posting the notice for visual accessibility to persons in wheelchairs, providing the notice electronically or on computer disc, or other versions). With respect to employees who do not work at a physical location of the Contractor, a Contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the Contractor provides computers that can access the electronic posting to such employees, or the Contractor has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the Contractor to notify job applicants of their rights if the Contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.
- J. The Contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding that the Contractor is bound by the terms of VEVRAA, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, protected veterans.
- K. The Contractor will include the provisions of this Clause in every subcontractor purchase order of \$100,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to VEVRAA so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.
- L. The Contractor must, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their protected veteran status.

10 ETHICAL CONDUCT

- A. The METRO Board of Directors has adopted a Code of Ethics governing the conduct of its officers and employees. The Contractor agrees it will familiarize itself with this Code of Ethics and that it will not offer, confer or agree to confer any prohibited benefit as consideration for a METRO Board Member's or employee's decision, opinion, recommendation, vote or other exercise of discretion as a public servant or in exchange for the Board Member's or employee's having exercised his official powers or

performed his official duties nor will the Contractor participate in any other violation of this Code.

- B. The Contractor is required to maintain those records necessary to prove beyond a reasonable doubt the Contractor's compliance with the METRO Code of Ethics Policy. METRO shall have the right to review for the purpose of determining compliance with the Code of Ethics Policy all disbursement records and supporting documents including invoices, payment vouchers, employee expense reports and petty cash records.
- C. Breach of this Article by the Contractor may result in termination of the Contract and exclusion of the Contractor from future contracts with METRO for a period of time determined by the METRO Board of Directors.

11 FORCE MAJEURE

- A. Neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
- B. This relief is not applicable unless the affected party does the following:
 - 1 Uses due diligence to remove the Force Majeure as quickly as possible, and
 - 2 Provides the other party with prompt written notice of the cause and its anticipated effect.
- C. At Metro's own cost and expense, METRO may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by METRO.
- D. If the Force Majeure continues for more than 30 days, METRO may terminate this Agreement by giving 30 days written notice to Contractor. This termination is not a default or breach of the Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF TERMNATION.

12 INTERPRETATION, JURISDICTION AND VENUE

This Contract shall be construed and interpreted solely in accordance with the laws of the state of Texas. Venue of any suit, right or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas.

13 METRO DELAY OF WORK

- A. If the performance of all or any part of the work is delayed or interrupted by an act of the Contracting Officer in the administration of this Contract, which act is not expressly or implicitly authorized by this Contract, or by his failure to act within the time specified in this Contract (or within a reasonable time if no time is specified), an adjustment (excluding profit) shall be made for any increase in the cost of performance of this Contract caused by such delay or interruption. However, no adjustment shall be made under this Article for any delay or interruption (i) to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or (ii) for which an adjustment is provided or excluded under any other provision of this Contract.
- B. No claim under this Article shall be allowed (i) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and (ii) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such delay or interruption, but not later than the date of final payment under the Contract.

14 METRO NONDISCRIMINATION

METRO shall not discriminate on the basis of race, color, national origin, or sex in the award and performance on any DOT-assisted Contractor in the administration of its program or the requirements of 49 CFR Part 26. METRO shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. METRO's program, as required by 49 CFR Part 26 and as approved by the DOT, is incorporated by reference in this Contract. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Contract. Upon notification to METRO of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. § 3801, et seq.).

15 PAYMENTS AND DISCOUNTS

The Contractor shall submit the original and one (1) copy of each invoice containing the following information: Contract Number; item number; description of materials, goods, services; unit prices; and extended amount. Payment will be made to the Contractor within ten (10) calendar days after receipt of the invoice or acceptance of all materials and goods furnished and work performed, whichever is later. For the purpose of earning any discounts, payment is deemed to be made on the date the METRO the ACH or wire is issued. Interest on payments under this Contract shall accrue and be paid only in accordance with Texas

Government Code, Title 10, Chapter 2251, which shall be the Contractor's sole remedy under this Paragraph.

16 PROHIBITED INTEREST

No member, officer or employee of METRO, or of any other local public body having jurisdiction over METRO, shall during his tenure or for one year thereafter, have any interest direct or indirect, in this Contract or the proceeds thereof.

17 TERMINATION FOR CONVENIENCE OF METRO OR CONTRACTOR

- A. Either party may terminate the Contract at any time after award of the Contract by providing a ninety (90) day written notice to the other party if it determines that such termination is in their best interest. Upon receipt of written notice of termination, performance by the parties shall cease to the extent specified in the notice of termination. In the event of termination in whole, the Contractor shall prepare a final invoice within thirty (30) calendar days of such termination reflecting the item(s) actually furnished pursuant to the Contract and to the satisfaction of METRO, that have not appeared on any previous invoice.
- B. METRO agrees to pay the Contractor, in accordance with the terms of the Contract, for conforming item(s) furnished and accepted.

18 TERMINATION FOR DEFAULT

- A. METRO 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 perform the services within the time and in the manner specified in this Contract or any extension thereof; or fails to perform any of the other provisions of this Contract.
- B. METRO's right to terminate this Contract may be exercised if the Contractor does not cure the condition or conditions constituting default within ten (10) calendar days (or such longer period as may be authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.
- C. If METRO terminates this Contract, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, services similar to that terminated, and the Contractor will be liable to METRO for any excess costs.
- 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:
 - 1. Acts of God or of the public enemy,
 - 2. Fires,
 - 3. Floods,
 - 4. Epidemics,
 - 5. Quarantine restrictions,
 - 6. Unusually severe weather,
 - 7. Acts of terrorism.

In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

- E. METRO shall pay the Contract price(s) for completed and accepted services. METRO may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect METRO against loss because of outstanding liens or claims of former lien holders.
- F. 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 METRO.
- G. The rights and remedies of METRO under this Article are in addition to any other rights and remedies provided by law or under this Contract.

19 TITLE AND RISK OF LOSS

Title to all deliverables covered by this Contract shall pass to METRO upon acceptance. Notwithstanding the above, the Contractor shall not be liable for loss or damage to deliverables caused by the negligence of officers, agents, or employees of METRO acting within the scope of their employment.

20 ENTIRE AGREEMENT

This Contract and attached Exhibits constitute the entire agreement between the parties and shall supersede all prior offers, negotiations, exceptions and understandings, whether oral or written, between the parties hereto. No modification of this Contract (including any change in the Work) shall be binding upon METRO or the Contractor unless evidenced by a written modification issued pursuant to the 'Changes Provision' or by other written order modification hereof, as appropriate.

SECTION X - FEDERAL REQUIREMENTS ARTICLES

NOT APPLICABLE

SECTION XI - EXHIBITS

1 EXHIBIT "A" SPECIFICATIONS ULTRA LOW SULFUR DIESEL

SPECIFICATION
FOR
ULTRA LOW SULFUR DIESEL

The Contractor shall ensure that all ultra low sulfur diesel fuel provided shall comply with all local, state and federal regulations.

The TxLED regulations apply to all diesel fuel sold or supplied as fuel for motor vehicles and non-road equipment operating in 110 central and eastern Texas counties.

1.0 DIESEL SAMPLING

1.1 The Contractor shall provide diesel testing report(s), to include invoice information on ultra low sulfur diesel provided to METRO, when requested. Reports shall include as many tests as are available regarding section 3 of this specification.

2.0 QUALITY ASSURANCE

2.1 METRO reserves the right to verify compliance with this specification upon obtaining fuel from Contractor at any time.

2.2 If at any time the ultra low sulfur diesel fuel is found not to be in compliance with the specification, as obtained from the Contractor racks, the Contractor shall be responsible for removing the fuel from METRO tanks, cleaning the tanks, and replacing with ultra low sulfur diesel that meets the specification. The Contractor will be responsible for all costs incurred as well as any resulting damage and repairs necessary to engines/fuel/emission systems due to non-compliant ultra low sulfur diesel.

3.0 AMERICAN SOCIETY FOR TESTING AND MATERIALS TEST METHODS

3.1 The Contractor shall ensure the Ultra low Sulfur Diesel fuel meets or exceeds the latest edition of the following American Society for Testing and Materials (ASTM) requirements:

<u>Test Methods</u>	<u>Min.</u>	<u>Max.</u>
D-86 Standard Test Method for Distillation of Petroleum Products 50 Percent 90 Percent (°F) End Point (°F)	----- 540	Report 640 675
D-93 Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester	130°F	-----
D-97 Standard Test Method for Pour Point of Petroleum Products Sept., Oct., Nov., Dec., Jan., Feb., Mar. April, May, June, July, August	- -----	0°F +10°F

D-130	Standard Test Method for Detection of Copper Corrosion from Petroleum Products by the Copper Strip Tarnish Test Corrosion, 3 hours @ 50°C (122°F)	-----	1.0
D-287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method)	30.0	-----
D-445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Viscosity) @ 100°F (38°C)	2.0	3.6
D-482	Standard Test Method for ash from Petroleum Products	-----	0.01
D-524	Standard Test Method for Ramsbottom Carbon Residue of Petroleum Products	-----	.35
D-613	Standard Test Method for Cetane Number of Diesel Fuel Oil	48.0	-----
D-974	Standard Test Method for acid and Base Number by Color Indicator Titration (British Standard 2634) (MG KOH/G)	Less than.04	-----
		<u>Min.</u>	<u>Max.</u>
<u>Test Methods</u>			
D-976	Standard Test Methods for Calculated Cetane Index of Distillate Fuels One of the following properties shall be met, Cetane Index Or the Aromaticity (ASTM D-1319). The Cetane is the ignition quality low cetane fuel causes poor starting, high cetane fuel causes good starting.	48.0	
		<u>Min.</u>	<u>Max.</u>
D-1266	Standard Test Method for Sulfur in Petroleum Products (Lamp Method)	-----	.0015
D-1319	Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption Lamp Method – This measures the part of fuels that are difficult to burn. High aromatics causes poor combustion and high white smoke at start-ups.	-----	10
D-1500	Standard Test Method for ASTM Color of Petroleum Products ASTM Color Color Visual	----- Undyed	2.5 -----
D-1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure) Measures bottom sediment, water content and any non-usable Material in fuel.	-----	<0.05
D-2274	Standard Test Method for Oxidation Stability of Distillate Fuel Oil (Accelerated Method) (mg/100ml)	-----	2.5
D-2276	Particulate Contamination mg/L max Measures the solid contaminates present in fuel. Higher amounts result in fuel system deposits, filter fouling,	-----	1.0

increases smoke and loss of usable fuel. Examples include; dirt, rust, and other foreign materials.

D-2500	Standard Test Method for Cloud Point of Petroleum Products Sept., Oct., Nov., Dec., Jan., Feb., March April, May, June, July, August	----- -----	+15°F +20°F
D-2622	Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry.	-----	.0015
D-4176	Standard Test Method for Free Water and Particulate Contamination in Distillate Fuels Procedure 2 Haze Rating @ 25°C (77°F)	-----	2.0

Test Methods

Min.

Max.

D-4294	Standard Test Method for Total Sulfur in Petroleum Products By Energy-Dispersive X-Ray Fluorescence Spectroscopy	-----	.0015
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1.1 If the Cetane number by test method D-613 is not available, D-976, or D-4737 (Standard Test Method for Calculated Cetane Index by Four Variable Equation), shall be used. A minimum Cetane index of 48 shall be met, regardless of the Cetane number. The Contractor shall conduct a Thermal Stability Test; 90-minutes at 300° F Pad Rating (DuPont Scale), with 7.0 as the maximum acceptable requirement.

1.2 The Contractor shall conduct a Lubricity Test in accordance with the proposed ASTM requirements. The lubricity level shall be determined using the following requirements:

D-6078	Scuffing Load Ball-On-Cylinder Lubricity Evaluator (SBOCLE)	3100g
	or	
D-6079	High Frequency Reciprocating Rig (HFRR)	.52μ

This measures the ability to lubricate; also called film strength. The lubricity, prevents any scuffing or damage to internal parts of the fuel system components such as injectors.

Note: Using the HFRR, a wear scar of 0.52μ at 60° C (maximum) is equivalent to a SBOCLE test result of 3100g (minimum).

2 EXHIBIT "B" CONTRACTORS RELEASE

Pursuant to the terms of METRO Contract No. _____, as amended, and in consideration of the sum of _____ Dollars (\$_____), which has been or is to be paid under said Contract to _____ (hereinafter called the Contractor) or its assignees, if any, the Contractor for itself and its subcontractors, upon payment of the said sum by the Metropolitan Transit Authority (hereinafter called METRO), does release and discharge METRO, its officers, agents, and employees, of and from all liabilities, obligations, claims and demand whatsoever under or arising from the said Contract, except specified claims as follows:

_____.

(IF NONE, SO STATE)_____.

IN WITNESS WHEREOF, this release has been executed this ____ day of _____, 20__.

By: _____

CERTIFICATE

I, _____, certify that I am _____ (title) of the firm named as the Contractor in the foregoing release; that _____, (name) who signed said release on behalf of the Contractor and its subcontractors, was the _____(title) of said firm; that said release was duly signed for on behalf of said firm and is within the scope of its powers as so constituted.

(If a Corporation, affix the Corporate Seal)

3 EXHIBIT "C" CERTIFICATION OF RESTRICTIONS ON LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No federal appropriated funds have been or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an office or employee of any agency, a member of Congress, an officer or employee 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.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, 'Disclosure Form to Report Lobbying,' in accordance with its instructions. After a Contract is awarded by METRO, if applicable, the undersigned is also required to submit to METRO's Contracting Officer a signed copy of the Form-LLL, 'Disclosure Form to Report Lobbying,' for all sub-awards at all tiers in excess of \$100,000.00.
- C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. Once a Contract is awarded by METRO, the undersigned is also required to submit to METRO's Contracting Officer a signed copy of the certificate for all sub-contracts at all tiers in excess of \$100,000.00.

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

Executed this _____ day of _____, 20____

Company Name: _____

By: _____
(Signature of Company Official)

(Title of Company Official)

4 EXHIBIT "D" DEBARMENT AND SUSPENSION FORM

The undersigned certifies, by submission of this certification, that neither the bidder's/contractor's company nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

If the company is unable to certify to any of the statements in this certification, the company shall attach an explanation to this certification.

I hereby certify that I am authorized to execute this certification on behalf of the company and certify the truthfulness and accuracy of the contents herein or attached hereto to the best of my belief. The company does/does not (strike one) have in-house legal counsel.

Company Name: _____

By: _____
Signature of Company Official Date

Title of Company Official

The following shall also be completed if the Company has in-house legal counsel:

The undersigned legal counsel for _____ hereby certifies that _____ has authority under state and local law to comply with the subject assurances and that the certification above has been legally made.

Signature of Company's Attorney Date

5 EXHIBIT “E” CODE OF ETHICS OF THE METROPOLITAN TRANSIT AUTHORITY

Please refer to the current versions of METRO’s Codes of Ethics for METRO Employees and for the METRO Board of Directors at <https://www.ridemetro.org/Pages/ConflictsDisclosure.aspx>