



1600 Franklin Street
Oakland, CA 94612

**Request for Proposals (RFP)
NO. 2019-1483**

**Mobile Ticketing
Application**

July 9, 2019

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

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Mobile Ticketing Application

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**ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
REQUEST FOR PROPOSALS
FOR
Mobile Ticketing Application**

RFP No. 2019-1483

I.SUMMARY OF PROPOSAL REQUEST/SCHEDULE OF EVENTS

1. Proposal Request.

The Alameda-Contra Costa Transit District (District) is requesting proposals from qualified firms (hereafter referred to as "Proposer") to provide a Mobile Ticketing Application, as set out in Part III, Scope of Work. The District invites sealed proposals in accordance with the provisions, specifications, and instructions set forth in this RFP. Proposals will be received until the date and time specified below. Late proposals will not be considered. All Proposers are cautioned to read the entire RFP, noting insurance and submittal requirements, and to complete all required forms. Failure to provide all requested information may cause the proposal to be deemed non-responsive.

2. Schedule of Events.

Listed below is the Schedule of Events that outlines the pertinent dates of which Proposers should make themselves aware.

Solicitation Event	Date	Time
Distribution of RFP	July 9, 2019	N/A
Proposer's deadline to submit questions, requests for modifications and/or clarifications	July 19, 2019	4:00 p.m.
District's response to questions, requests for modifications and/or clarifications	July 25, 2019	N/A
Proposals Due	August 1, 2019	5:00 p.m.
Proposer Interviews, if held	Week of August 12, 2019	N/A
Notice of Award Issued	September 12, 2019	N/A
Contract Executed	September 30, 2019	N/A

3. Description of the District.

The Alameda-Contra Costa Transit District is a California Special District created by the voters in 1956 and is subject to regulation under the Transit District Law, as amended (see California Public Utilities Code Section 24501 *et seq.*). The District provides public transit services to riders throughout western Contra Costa County to southern Alameda County. The District has four (4) operating divisions in addition to the Central Maintenance Facility, Training Center, and the General Office. The District is financed through the receipt of transit fares, property taxes, and state and federal funding.

(End of Summary of Proposal Request/Schedule of Events)

II. INSTRUCTIONS TO PROPOSERS

1. Proposal Submittal.

A. Questions, Requests for Modifications and/or Clarifications.

Any questions or requests for modifications and/or clarifications of the Proposal specifications shall be submitted in writing by electronic transmission to Jeanet A. Moore at JAMoore@actransit.org or delivered to their attention at 1600 Franklin Street, 6th Floor, Oakland, CA 94612. Questions and requests for modifications and/or clarification must be received no later than the due date and time indicated in Part I, Schedule of Events.

Any interpretation, change, or correction of said specifications will be issued by Addenda only, duly issued by the District. All oral modifications of these conditions or specifications are void and ineffective. The District reserves the right to reject any Proposal that contains unauthorized conditions or exceptions.

B. Proposal Due Date.

Final proposals shall be emailed to the attention of Jeanet A. Moore (JAMoore@actransit.org) in the AC Transit Purchasing Department, by the due date and time indicated in Part I, Schedule of Events, with return receipt required. Acceptable softcopy formats include pdf, docx, xlsx, and ppt via email. Final proposals received after the time and date specified will not be considered. All emailed packages shall be clearly marked with the RFP Number, Project Title, and the Due Date and Time.

Submission of a Proposal shall constitute a firm offer to the District for 120 calendar days from the submission deadline for Proposals. A Proposer may withdraw its proposal any time before the date and time when proposals are due, without prejudice, by submitting a written request for its withdrawal to the email address specified in this Section II.2.B. A telephone request is not acceptable. The withdrawal of a proposal does not prejudice the right of a Proposer to submit another proposal within the time set for receipt of proposals. After the proposal due date, a proposal may be withdrawn only if the District fails to award the contract within the proposal validity period set forth here, or any agreed upon extension thereof.

District staff will review all responsive Proposals received and one or more finalists may be selected in identification of the competitive range. These finalists may be invited to an oral interview, if one is held.

2. Proposal Content.

Proposals shall be prepared simply and economically, providing a straightforward and concise description of the Proposer's capabilities and approach for meeting the requirements of this RFP. The Proposal documents shall be divided into sections using headers and footers, with cover pages identifying the contents of the sections, and properly formatted for printing. Failure to provide ALL of the required submittals may render the proposal non-responsive. Although the District is not specifying a page limit, clarity and conciseness are essential and will be considered during Proposal evaluation.

A. Cover Letter

The signed cover letter should be on company letterhead clearly stating the firm name of the Proposer, business address, telephone and facsimile numbers, and e-mail address. The following information must be provided:

- i. Introduce the firm and summarize its qualifications.
- ii. Name(s) of authorized principals with authority to negotiate and contractually bind the firm.
- iii. A statement that binds the Proposer to the proposed Scope of Work and Fee Proposal for 120 calendar days.
- iv. Indicate whether there are any conflicts of interest that would limit the Proposer's ability to provide the requested services. See Part IV, Section 9.
- v. Acknowledge receipt of all addenda by including the addendum number for each addendum received.

B. Technical Proposal.

Each proposal shall include a detailed description of the technical components to specific sections and methodologies, capacity, strategy, to perform the scope of work.

- i. Experience:
 - a. Based on the references provided in the enclosed Attachment 1A, Proposals must provide details on the referenced projects relating to the quality of work, the relevance of the projects, and insight into the work process of the Proposer's team. Relevance of the project includes the make-up of the team as well as the type of project. Preference will be given to projects that are similar in scope and nature to this project.
- ii. Project Approach:
 - a. Proposals must include the proposed work plan and identify the Proposer's understanding of the project and competency in achieving the project goals.
- iii. Support
 - a. Proposals must include details on the proposed comprehensive and flexible support and maintenance package.
 - b. Proposals must include a thorough training solution.

C. Fee Proposal.

The estimated annual budget available to provide, host, operate and maintain the mobile ticketing app will be based on the number of tickets sold. The District desires a platform with minimal upfront development fees and with fee billing as a percentage of ticket sales. The percentage fee should be in line with the District's current cost to process fares, which is currently between 6% and 10% of each dollar for Clipper and Cash, respectively.

Proposers will be required to submit a Fee Proposal based on the expected volume and value of annual transactions. The Proposer selected for this project will be

required to enter into an Agreement with the District, a form of which is provided as Attachment 1B, for a 24-month term, which includes a two-month initial development period and subsequent 22-month operating duration (Note: the Metropolitan Transportation Commission (MTC) requires that all mobile ticket applications cease operation with 6 months of the roll out of mobile ticketing through Clipper 2.0).

Be sure to submit the Fee Proposal as a separate attachment with the proposal submission.

If requested, Proposers agree within 72 hours to permit access to financial records to verify labor rates, overhead rates, and other information should the District determine that such information is required prior to negotiations or award of a Contract to determine the proposed price as fair and reasonable.

D. Required Forms.

Proposers must submit all required forms, specifically:

- i. Attachment 1A – Proposer’s Statement of Qualifications and Business References
- ii. Attachment 1B - Fee Proposal Form
- iii. Attachment 1C - Prime Contractor and Subcontractor/Supplier Report
- iv. Attachment 1D – Information Security Questionnaire
- v. Attachment 1E – Certification Regarding Lobbying

E. Exceptions to Sample Contract.

A Sample Contract is attached to this solicitation that will be finalized and issued to the Awardee determined at the conclusion of proposal evaluations. **If a Proposer desires any modification of these terms, this should be submitted with the proposal.** Otherwise, the Proposer will be deemed to have accepted the form of Contract without modification. Attention is directed in particular, to the Indemnification and Insurance requirements.

3. Evaluation Process.

A. Evaluation Process.

The District intends to award a Revenue Contract with fixed fees/rates to the most qualified, responsible firm submitting a responsive Proposal. The District may not consider any Proposal in which the technical approach, qualifications, or costs are not deemed to be within a competitive range. The District may seek clarifications or additional information from any or all Proposers regarding their Proposals and may request modified Proposals or best and final offers. In evaluating the Proposal, the District will consider the Proposal material submitted, oral interviews (if applicable), client references, and any other relevant information about a given Proposer.

Proposers determined to be within the competitive range, will be notified in writing. Each Proposer in the competitive range may be invited for an interview with the District to discuss answers to written or oral questions, clarifications, and/or any other aspect of its proposal.

No information will be provided to any Proposer about any of the other Proposals submitted. Proposers will not be told of their rankings within the competitive range.

The District, in its sole discretion, may afford Proposers in the competitive range the opportunity to amend the proposal and make their best and final offer (BAFO). The District’s Evaluation Panel will evaluate the BAFO using the same criteria used to evaluate the original Proposals. If a Proposer does not submit a BAFO upon request,

the District will deem its immediate previous offer to be its BAFO. If the District accepts the highest ranked Proposal based upon the BAFO there will be no further negotiation.

B. Evaluation Criteria.

Proposals will be evaluated based on each reviewer’s determination of suitability to the needs of the District. The evaluation criteria set forth below will be applied in the determination of competitive range, final evaluation, and as needed. Based upon individual evaluations of the non-price evaluation criteria below, the District’s Procurement staff will record and calculate the raw evaluation scores of the Evaluation Panel for each proposal, calculate composite raw scores and apply the established weights shown below. The following weighted method of scoring will be used in evaluating proposals:

WEIGHT ASSIGNMENT FOR PROPOSAL EVALUATION CRITERIA	
Evaluation Criteria	Weight
1. Experience	25%
2. Project Approach	40%
3. Support	15%
4. Cost/Fee	20%
TOTAL POSSIBLE WEIGHT	100%

For the evaluation of cost/fee, raw points will be assigned by the Contracts Specialist to the Proposal with the lowest overall cost/fee. The Proposal offering the lowest contract cost/fee for the services required will receive the maximum points (in this case 20% of all available points) allocated for cost/fee. Other cost/fee proposals will be allocated points on a pro-rata basis, such that a proposal that is twice as costly as the lowest cost/fee proposal would receive half the points (in this case 10%) allocated to cost/fee.

$$(Low\ Price/Proposer's\ Cost/Fee) \times 5 = Total\ Raw\ Cost/Fee\ Points$$

The Total Raw Cost/Fee Points are then multiplied by the Cost/Fee Weight to yield the Total Weighted Cost/Fee Points.

The Total Weighted Cost/Fee Points are added to the Total Weighted Technical Points to yield the grand total score of each Proposer.

4. Recommendation of Award.

The District’s Evaluation Panel will recommend the proposal which best measures up to the weighted criteria set forth above. The results of the evaluations and the selection of a proposal for award will be documented. The Evaluation Panel’s selection will be recommended to the District’s Board of Directors for approval, if required. The District’s Board of Directors has the option of accepting the recommendation or of resoliciting the requirement/project if it determines that it is in the best interest of the District.

A. Form of Contract.

The firm selected by the District to perform the services outlined in this RFP will be required to execute an Contract, a sample of which is attached as Attachment 3.

B. Signature Requirements.

Proposals must be signed by a duly authorized officer(s) eligible to sign contract documents for the Proposer (the "Authorized Signer"). If the Proposer is an individual, the Contract shall be executed by the individual personally. If the Proposer is a co-partnership, it is desirable that the Contract be executed by all of the partners, but it may be executed by one (1) of them. If the Proposer is a corporation, this Contract must be executed by two corporate officers, consisting of: (1) the president, vice president or chair of the board; and (2) the secretary, assistant secretary, chief financial officer or assistant treasurer. In the alternative, this Contract may be executed by a single officer or a person other than an officer provided that evidence satisfactory to the District is provided demonstrating that such individual is authorized to bind the corporation (e.g. a copy of a certified resolution from the corporation's board or a copy of the corporation's bylaws). If the Proposer is a joint venture, the Contract must be executed on behalf of each participating firm by officers or other authorized individuals. If the Proposer is an LLC, the Contract must be executed by an officer or member who is authorized to bind the LLC.

Consortiums, joint ventures, or teams submitting proposals, although permitted and encouraged, will not be considered responsive unless it is established that all contractual responsibility rests solely with one Proposer or one legal entity. The submittal should indicate the responsible entity. Proposers should be aware that joint and several responsibility and liability will attach to any resulting Contract and failure of one party in a joint venture to perform will not relieve the other party or parties of total responsibility for performance.

(End of Instructions to Proposers)

III.SCOPE OF WORK

1. Background

In recent years, most transit operators in the San Francisco Bay Area have initiated programs for accepting mobile fare payment. These programs have grown out of a recognition of the rapid growth in smart phone use by all ages, ethnicities and income levels, and a growing national trend of cashless transactions for transportation services and everyday purchases. In addition, encouraging customers to take advantage of cashless fare payment options can reduce dwell time, operating costs, and the costs of fare collection, and expand access to fare products.

The Alameda-Contra Costa Transit District (the District) is seeking a mobile ticketing app for its bus transit services. The app should augment the use of Clipper® - the Bay Area's regional fare card - while overcoming some of its current limitations and bridging the gap to the next generation of Clipper (Clipper®2.0). The proposed solution shall provide the District's passengers with reliable, secure, intuitive interfaces for various ticket types, including: Single Ride, 1-Day, 7-Day and 31-Day passes for both its local and Transbay service, as well as supporting discounts for Youth and Senior/Disabled customers. The application shall provide ease of use functionality in fare enforcement. Initially only visual validation will be used by District staff.

The Proposer will be responsible for providing, hosting, operating and maintaining the mobile ticketing app. The District requires a turnkey solution that shall include design, testing, delivery, site preparation, installation, and assistance with associated hardware if necessary, software, communications, all system interfaces, all other system components, operations, maintenance, licenses, support and training. **The look and feel of the application shall be branded by AC Transit and available for download on the iOS and Android app stores.**

In addition, the District desires a mobile ticketing solution with the capacity to implement a fare accumulator, a feature currently available through Clipper® only for the Day Pass. Customers using the mobile app would pay for single rides until they cap out at the District's day and weekly pass rates. This can provide an additional opportunity for riders to benefit from the discounts afforded to pass buyers without having to pay for a pass upfront.

2. Mobile Ticketing App Scope

The Scope of Work describes the District's minimal functional requirements for a mobile ticketing app. It is intended to be used as a general guide and is not a complete list nor description of all work necessary. Proposers responding to this RFP are expected to be familiar with all aspects of project management. Additional requirements pertaining to this Work are stipulated in the Sample Contract included as an attachment to the RFP.

Proposers are strongly encouraged to specifically review requirements relating to ownership of work, data privacy, and data security included.

Fare System Goals and Objectives

The District hopes to achieve the following goals with the implementation of an app-based fare payment system:

- A. Stimulate growth in ridership.
- B. Decrease dwell time.
- C. Increase ease of use for customers and improve rider experience.
- D. Reduce cash and lower cash handling costs.

- E. Increase access to fare products, especially for customers lacking convenient access to Clipper retail locations.
- F. Increase access to pass products through fare accumulator, providing customers with opportunity to benefit from the discounts afforded to monthly pass buyers without having to pay for a monthly pass upfront.

General Mobile Ticketing Requirements

The Selected Contractor shall provide, host, operate and maintain a Mobile Ticketing App based on the following criteria:

A. Rider Application

- i. A native application that runs on iOS and Android which is available in the iOS App Store and Google Play store as a free download.
- ii. Doesn't require a user account or sign-in to purchase tickets, but will be optional.
- iii. Doesn't require users to store a payment method, but will be optional.
- iv. Supports purchasing and validating multiple tickets at the same time on a single device.
- v. Provides a simple and intuitive ticket selection interface for first time and infrequent users.
- vi. Visual validation distinguishes between fare types.
- vii. Tickets expire in an appropriate time after they are validated.
- viii. No hardware required for validation (visual only).
- ix. Visual validation works offline.
- x. Contains security features to prevent electronic scanning and screen shots of expired or fraudulent mobile tickets.
- xi. Accepts mobile wallet payment options such as, but not limited to, Apple Pay, Google Wallet, Android Pay, MasterPass, Paypal, Softcard, etc.
- xii. The District is part of the Clipper regional Fare Collection program, which is undergoing a major upgrade. The Next Generation Clipper Mobile Ticketing Application will go-live in 2021. The Proposer shall include a plan for Account migration services to Next Generation Clipper platform, if needed.

B. Fare products and fare capping

- i. Application shall support all of the District's fare products. The District's current fare products are listed below:

Fare Categories	Cash Fare	Day Pass	31-Day Pass
Local Adult	\$2.50	\$5.50	\$84.60
Local Youth/Senior/Disabled	\$1.25	\$2.75	\$34.00
Transbay Adult	\$5.50	See Note	\$198.00
Transbay Youth/Senior Disabled	\$2.75	See Note	See Note

Note: Using Clipper saves 25 cents (13 cents for Youth/Senior/Disabled) on single local fares. Day Pass may be used for Transbay ride with additional cash payment of \$3.00 for Adults or \$1.50 for Youth/Senior/Disabled. Local Youth/Senior/Disabled 31-Day Pass may be used to ride Transbay with additional cash fare of \$1.60.

- ii. Application shall support the District's desire to implement fare capping, whereby riders can pay for single trips that are then capped at the daily, weekly, or monthly pass level.
- iii. The application shall be able to incorporate fare changes and new fare products as they become available.

C. Agency Analytics Platform

- i. Provides a back-end dashboard with access to data on usage, ridership, and revenue.
- ii. It is preferred for the client software to be browser based.
- iii. License-free software and all future software updates shall be provided at no extra cost.
- iv. The software shall provide various levels of user access rights that allow and restrict access to various functions.
- v. The software shall provide access to an unlimited number of users and feature multiple user access-levels with password protection to ensure system settings are secure.
- vi. Customer usage statistics will include information on tickets used including associated information such as validation location, route/block validated, date, time and GPS coordinate of boardings.
- vii. Ability to manage fare structure requirements.
- viii. Ability to provide refunds to riders.
- ix. Ability to see sales and transaction data in real time.
- x. Ability to easily export all data for integration with other software systems and tools.
- xi. Application Programming Interface (API) for extracting usage data that is free for the District to access, use, and share.
- xii. Ability to run sales, usage summary, user statistics, ticket statistics, and revenue summary reports
- xiii. Ability for third party applications such as Google Maps, Apple Maps, Transit App, Citymapper, TNCs to offer AC Transit mobile tickets in their app via an API or SDK.

D. Other requirements

- iv. Mobile ticketing app must be deployed and in use at an existing transit agency or organization
- v. Hosting and maintenance of the mobile ticketing app must be the responsibility of the Contractor.

- vi. The Proposer shall be responsible for providing the Software Development Kit.
- vii. The Proposer shall furnish a mechanism for Source Code escrow.
- viii. Upon receipt of a notice to proceed, the App shall be fully designed, developed, tested, and revenue ready within two months.

Security

Data security for the mobile ticketing app applications, system and interfaces shall employ the most current industry and U.S. government techniques to ensure that all data is safeguarded from unauthorized access or use and programs are protected from any known cyber-attack or computer virus. The entire mobile ticketing platform system, all system applications that process payments, and all communications and computer systems comprising the entire mobile ticketing app shall be in full compliance with the Payment Card Industry (PCI) standards. Additionally, the Platform application shall contain a variety of security features to allow for applicable District personnel to easily visually identify invalid, expired or fraudulent mobile tickets.

All Contractors engaged in information stewardship must sign the Contractor Confidentiality and Integrity Statement within the [AC Transit Administrative Regulation 440B](#) (with a sample provided at Attachment 6 of this RFP), which states that control of the disclosure of information shall be retained by AC Transit.

3.

Schedule

The District anticipates the need for the mobile ticketing application for a term of 24 months, which includes two (2) months for initial development and implantation, and a 22-month operation period of the application.

(End of Scope of Work)

IV. STANDARD CONDITIONS

1. Reserved Rights.

All Proposers are notified that the Contract for these services is contingent upon funds appropriated by the District and local, regional, state and federal governments. In the event that funding is eliminated or decreased, the District reserves the right to terminate any Contract or modify it accordingly. The District makes no representations that any Contract will be awarded to any Proposer responding to the RFP.

The District reserves the right to waive any immaterial irregularities in any and all proposals.

The District reserves the right, in its sole discretion, to reject all proposals and re-solicit or cancel this procurement if deemed by the District to be in its best interest.

The District reserves the right to select the proposal that, in its judgment, will best measure up to the weighted evaluation criteria set forth in Part II above.

The District reserves the right to negotiate a contract that covers selected parts of a proposal, or a contract that will be interrupted for a period or terminated for lack of funds.

The District reserves the right to award in whole or in part, by line item or group, or to make multiple awards or no award, whatever is in the best interests of the District.

2. Protest Procedures.

A link to the District's protest procedures is listed below: You may also find it on the District's website (actransit.org) by clicking on "Board Policies / Notices" on the right hand side of the home page, and then scrolling down to Board Policy 468.

http://www.actransit.org/wp-content/uploads/board_policies/BP%20468%20-%20Procurement%20Protest-1.pdf

3. DBE Program/SBE Goal.

There is no DBE or SBE goal for this for this contracting opportunity.

4. Vendor Registration.

Online Vendor Registration is required prior to contract award. Proposers should access www.actransit.org, select: Doing Business with AC Transit, Vendor Login and Registration, and Vendor Registration, to register as an Online Purchasing User. To complete the process, include a W-9, Request for Taxpayer Identification Number and Certification (containing original signature) in proposals. If online access is not available, contact the Contracts Specialist for instructions.

5. Cost of Proposal and Pre-Contractual Expenses.

The District shall not be liable for any pre-contractual expenses incurred by any Proposer. Proposers shall not include any such expenses as part of the Proposal. The District shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP. Pre-contractual expenses are defined as expenses incurred by Proposer in:

- A. Proposals in response to this RFP (including copies or other expenses of any submitted documentation).
- B. Costs associated with interviews and meetings (including travel expenses) incurred in responding to this RFP.
- C. Other expenses incurred by a Proposer prior to the date of award and formal Notice to Proceed for any contract.

6. Waiver.

By submitting a Proposal, the corresponding Proposer represents and warrants that it has sufficiently informed itself in all matters affecting the performance of the work or the furnishing of the labor, supplies, material, or equipment called for by the envisioned Contract; that Proposer has checked its Proposal for errors and omissions; that the prices stated in its Proposal are correct and as intended by it and are a complete and correct statement of its prices for performing the work or furnishing the labor, supplies, materials, or equipment required by the Contract.

7. Exceptions to Sample Contract.

If a Proposer desires any modifications to the Sample Contract (Attachment 3), they must be submitted for consideration with the Proposal. Otherwise, the Proposer will be deemed to have accepted the form of Contract without modification. Attention is directed in particular, to the Indemnification and Insurance requirements.

8. Public Records Act/Confidentiality.

The California Public Records Act (Cal. Govt. Code Sections 6250 *et seq.*) mandates public access to government records. Therefore, unless the information is exempt from disclosure by law, the content of any request for explanation, exception or substitution, response to these specifications, protest or any other written communication between the District and the Proposer shall be available to the public.

If the Proposer believes any communication contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer shall request that the District withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. Proposer may not designate its entire Proposal as confidential. Additionally, Proposer may not designate Proposal Forms as confidential.

If the Proposer requests that the District withhold from disclosure information identified as confidential, and the District complies with the Proposer's request, the Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify, defend, and hold harmless the District from and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the Proposer information), and pay any and all cost and expenses related to the withholding of the Proposer information. The Proposer shall not make a claim, sue or maintain any legal action against the District or its directors, officers, employees or agents in connection with the withholding from disclosure of Proposer information or in connection with disclosure of Proposer Information in the event the District determines such information is subject to disclosure.

If the Proposer does not request that the District withhold from disclosure information identified as confidential, the District shall have no obligation to withhold the information from disclosure and may release the information sought without liability to the District.

9. Conflict of Interest.

By submitting a Proposal, the Proposer represents and warrants that no director, officer or employee of the District is in any manner interested directly or indirectly in the Proposal or in the Contract which may be made under it or in any expected profits to arise there from, as set forth in Article 4, Division 4, Title I (commencing with Sec. 1090) of the Government Code of the State of California.

The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code Sections 1090 *et seq.* or Sections 87100 *et seq.* during the performance of services under this Contract. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of this Contract. Violation of this provision may result in this Contract being deemed void and unenforceable.

Depending on the nature of the work performed, the Proposer may be required to publicly disclose financial interests under the District's Conflict of Interest Code. The Proposer agrees to promptly submit a Statement of Economic Interest on the form provided by the District upon receipt. No person previously in the position of director, officer, employee or agent of the District may act as an agent or attorney for, or otherwise represent, the Proposer by making any formal or informal appearance, or any oral or written communication, before the District, or any officer or employee of the District, for a period of twelve (12) months after leaving office or employment with the District if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, awards or revocation of a permit, license, grant or Contract.

The Proposer warrants that it has no organizational conflicts of interest at this time. Alternatively, the Proposer must disclose all known organizational conflicts of interest. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to the District; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other agreement.

10. Insurance

It is strongly recommended that contractors confer with their respective insurance carriers and/or brokers to determine, in advance of proposal submission, the availability of insurance coverage as required under this solicitation. Failure to comply with the insurance requirements may result in disqualification from award of the contract. Compliance with insurance requirements hereunder is considered a material term of the contract. The Insurance Requirements set forth in Attachment 3 will apply to this solicitation and the subsequent contract, if any.

11. Ex-Parte Communications.

Proposers and Proposers' representatives may not communicate orally with an officer, director, employee, or agent of the District, with the exception of the Procurement Staff or DBE Program Administrator regarding this RFP until after a Notice to Proceed has been issued by the District. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of the District during a public meeting.

In the context of this RFP, an "ex parte communication" is any communication between a Proposer (or the Proposer's representative) and the District's General Manager, Board Member, officer, employee or consultant, regardless of who initiates the communication, other than as part of the procurement process specified herein, before the District issues a Notice to Proceed, unless it is in writing and available for disclosure to the general public.

V.FORMS AND ATTACHMENTS:

A. ATTACHMENT 1: FORMS

- 1A Proposer's Statement of Qualifications and Business References
- 1B Fee Proposal Form
- 1C Prime Contractor and Subcontractor/Supplier Report
- 1D Information Security Questionnaire
- 1E Certification Regarding Lobbying

B. ATTACHMENT 2: Insurance Requirements

C. ATTACHMENT 3: Sample Contract

D. ATTACHMENT 4: Federal Terms and Conditions

E. ATTACHMENT 5: Prompt Payment Affidavit Form

F. ATTACHMENT 6: Contractor Confidentiality and Integrity Statement

Attachment 1A PROPOSER'S STATEMENT OF QUALIFICATIONS & BUSINESS REFERENCES

A. Proposer Name: _____

B. How many years has your organization been in business under your present business name?

C. 3-Year Annual Gross Sales

Year:	Year:	Year:
\$	\$	\$

D. Give information below about all your current and ongoing projects. (Attach additional sheets if necessary.)

Client	Location (city/ state)	Type of Work	Value of Work	Percent Complete d of Overall Project	Schedule d Completi on Date

E. List all key projects your organization has completed, which are similar in nature to the Scope of Work outlined in this solicitation during the last three (3) years, at a minimum.

Client	Location (city/state)	Type of Work	Value of Work	Year Started	Year Completed

(Attach additional sheets if necessary.)

F. Give information below about the relevant experience of the principal individuals of your present organization including those individuals to be in responsible charge of this project. Attach additional sheets if necessary.

Individual's Name	Title	Years of Professional Experience	Type of Work

G. **References:** List a minimum of two Professional references for whom your organization has performed work similar in nature to the Scope of Work outlined in this solicitation. Do not list AC Transit as a reference.

Business Name	Contact Person	Phone	Email

(Attach additional sheets if necessary)

H. Have you or your organization, or any officer or partner thereof, defaulted on a contract?

No Yes If yes, please explain below. Attach additional sheets if necessary.

I. Is any pending litigation or adverse findings against your organization?

No Yes If yes, please explain below. Attach additional sheets if necessary.

J. Has your firm ever been debarred by a Federal, State or Local Government agency?

No Yes If yes, please explain below. Attach additional sheets if necessary.

The undersigned proposer represents and warrants that the foregoing information is true and accurate to the best of its knowledge and the undersigned intends that the District rely thereof in awarding the attached contract.

Signature of Proposer

Name/Title

Dated: _____

Attachment 1B FEE PROPOSAL FORM

Instructions: Included in the fixed fees/rates shall be all labor, materials, taxes, insurance, any subcontractor costs, travel expenses, telephone costs, copying costs, profit, administrative and overhead fees, and all other costs as required in the resultant Contract. The estimated annual budget available to provide, host, operate and maintain the mobile ticketing app will be based on the number of tickets sold. The District desires a platform with minimal upfront development fees and with fee billing as a percentage of ticket sales.

The percentage fee should be in line with the District's current cost to process fares, which is currently between 6% and 10% of each dollar for Clipper and Cash, respectively. Proposers will be required to submit a Fee Proposal based on the expected volume and value of annual transactions.

Please refrain from editing all fee types except for edits/additions/deletions of cells clearly identified for Optional Features.

Fee Type	Occurrence <i>(One-time or Recurring)</i>	Fixed Fee/Rate	
		<u>%</u>	<u>\$</u>
Application/Software Development			
Vendor Processing Fees			
Third Party Processing Fees			
Annual Licensing and Support			
Optional Features			
[Fill in Optional Features here]			
[Fill in Optional Features here]			
[Fill in Optional Features here]			
<u>Proposed Totals</u>			

Attachment 1C:

PRIME CONTRACTOR & SUBCONTRACTOR/SUPPLIER REPORT To be Completed and Returned by Proposers

The Proposer is required to furnish the following information in accordance with the provisions of Public Contract Code Sections 4100 to 4113, inclusive. This list and information shall include all subcontractors that will perform work, provide labor or render services to the Proposer in connection with the project in an amount in excess of **one-half of one percent (0.5%)** of the total amount of Proposer's Grand Total Proposal Price.

Prime/Subcontractor/Supplier Name/Address/Contact Information	Type of Work	Percentage of Work	Check if Applicable		DBE/SBE Certifying Agency	Annual Gross Receipts
			DBE	SBE		
Name:						
Address:						
Contact Person:						
Phone:						
Email:						
How Many Years In Business:						
DIR Registration #:						
License No (if applicable):						
Name:						
Address:						
Contact Person:						
Phone:						
Email:						
How Many Years In Business:						
DIR Registration #:						
License No (if applicable):						
Name:						
Address:						
Contact Person:						
Phone:						
Email:						
How Many Years In Business:						
DIR Registration #:						
License No (if applicable):						
Name:						
Address:						
Contact Person:						
Phone:						
Email:						
How Many Years In Business:						
DIR Registration #:						
License No (if applicable):						

Attachment 1D:

INFORMATION SECURITY QUESTIONNAIRE To be Completed and Returned by Proposers

Provider Name: _____

Product Name: _____

Product Version: _____

Contact Name: _____

Date: _____

1. Data

a. Which of the following data are collected?

- Directory Information
- Date of Birth
- Social Security Number
- Employee ID Number
- Financial Records
- Medical/Health
- Socio-Economic/Demographic
- Biometric
- Behavioral
- Geolocation Data
- Photos, Videos, or Audio Recordings
- Search Activity
- No personally identifiable information collected
- Other _____

b. What, if any, data is collected by 3rd parties (e.g., via cookies, plug-ins, ad networks, web beacons etc.)?

c. Ownership of all data must be spelled out. Many cloud providers specify that using their services means relinquishing ownership of the data. Please spell out the ownership of all data:

d. Is there any possibility for vendor staff to review / copy / duplicate the data (with the exception of routine backups) without our knowledge?

e. Is the data / information we contemplate storing in the "cloud" subject to any relevant Federal, State or other privacy requirements or agreements already in place? (i.e. PCI compliance, HIPAA, etc.) If so what documentation can you supply that ensures that their storage and delivery systems comply with those requirements?

f. Please provide a link to your privacy policy:

g. If you are contacted by an outside party (i.e.: subpoenas, open records requests, etc.) to provide information contained in one of our documents, how do they respond? If we are required to hold data for litigation purposes do they have a mechanism / system in place to do so or are we on our own?

- h. Will “live” data be used in non-production (e.g. test or development, training) environment?
 - i. Are these environments secure to the same standard as production data?

2. Security

- a. Explain how our data will be protected in your environment.
- b. Since this is a web-based system can you provide certification that your systems are updated regularly? This includes patches, antivirus systems, backend databases, web interfaces, etc.
- c. Is all or some data at rest encrypted (e.g. just passwords, passwords and sensitive data, all data) and what encryption method is used?
- d. How often do you perform security audits on their systems and when was the last one done? Can we see the results?
- e. Do you perform regular penetration testing, vulnerability management, and intrusion prevention?
- f. What is your policy/process regarding informing us and responding to a data breach?
- g. Do we have the ability to perform security incident investigations or e-discovery? If not, will you assist us? For example, do you have access to logs of end user, administrative and maintenance activity and are these logs available to AC Transit for incident investigation?
- h. Are the physical server(s) in a secured, locked and monitored environment to prevent unauthorized entry?
- i. How often is our data backed up on your service?
- j. Are backups performed and tested regularly and stored off-site?
- k. How do you protect data in transit?
- l. Does your company perform background checks on personnel with administrative access to servers, applications and customer data?
- m. Do you subcontract any functions, such as analytics?
- n. What is your process for authenticating callers and resetting access controls, as well as establishing and deleting accounts?
- o. If data is transferred/uploaded to you, are all uploads via SFTP or HTTPS?
- p. How do you notify customers about any changes that will affect the security, storage, usage, or disposal of any information received or collected?
- q. Have your security operations been reviewed or audited by an outside group? If yes, please describe.
- r. Does your company comply with a security standard such as the International Organization for Standardization (ISO), the Payment Card Industry Data Security Standards (PCI DSS)?
- s. What is the recovery time expected in the event of a significant failure in your storage or service infrastructure?

3. Data Storage and Access

- a. How often do you release updates or patches to your service software? How much notice in advance of implementation are customers given?
- b. When patches or updates are made to your service, how is testing done?
- c. Are customers allowed to verify changes after your testing in a test environment before the are released to production?

- d. If we find problems while testing a proposed update, what is the process to remediate? Do we remain on our current version while this is done?
- e. Are updates typically implemented outside of normal business hours?
- f. Are there any limitations regarding access to the data? – i.e.: are we notified in advance of planned downtimes, etc.
- g. Are there any QOS provisions in the agreement? – i.e.: the data will be available 24/7, 7 days / week with a guaranteed minimum response time from their system based on agreed-upon criteria.
- h. What formats can we use to retrieve any and all data – i.e.: what utilities exist that will allow us to archive data in industry-standard formats for later retrieval by AC Transit staff without having to work through or with the vendor's proprietary format?
- i. Will we have direct access to our data in your schema for ad-hoc queries? If not, can we get extracts of our data that would allow us to do analysis of our data beyond what your service provides? How would that work?
- j. What format is the data stored in at the host site?
- k. Where is the live data actually stored?
- l. Where are the backups stored?

4. Data Retention

- a. What is the retention policy for data in your environment? For example, is there a limit based on data size or age that is enforced?
- b. What provisions have been made to protect our data if your business closes its doors or is sold?
- c. How do you assure the proper management and disposal of data?
- d. How will you delete data? Is data deleted on a specific schedule or only on termination of contract? Can we request that information be deleted? What is the protocol for such a request?
- e. If we delete data from a system what assurance do we get that the data has been removed from backup systems, disaster recovery sites, etc.?
- f. Please describe what happens with our data at the termination of a contract or termination of service?
- g. If we decide to leave your service. Is there a cost for extracting our data from your service? How far back can we go?
- h. If we leave your service, do you guarantee the removal of our data? In what period of time?
- i. Are there options for us to take all of our data at termination of service? If yes, please elaborate.

5. Availability

- a. Do you offer a guaranteed service level? Please explain
- b. What is the backup-and-restore process in case of a disaster?
- c. What is your protection(s) against denial-of-service attack?
- d. What are the hours of availability for your support staff?
- e. Is support handled differently on weekends, holiday, or off hours?
- f. What is the process for reporting problems and what sort of response can we expect?

- g. What is your commitment (SLA) on the availability of your service for our use?
- h. How often do your service fees increase? After any negotiated contract pricing period, what rate of increase can be expected?
- i. If we need a change made to a report , a new report, or an adjustment to support new inbound data what is the process to initiate that? Is this typically a negotiated change?
- j. If we wanted to feed our data from your service to another applications or service, what mechanisms are available for outbound interfacing? Are there fees associated with setting up additional outbound interfaces?

Attachment 1E:

Certification Regarding Lobbying

Proposers shall certify 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. Proposers 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 shall be forwarded to the District. Proposers shall ensure that all of its Subcontractors included in their Proposal shall certify the same.

Please choose one:

No, Proposer has not participated in lobbying activities as outlined above

Yes, Proposer has participated in lobbying activities as outlined above

If yes –and complete the Disclosure of Lobbying Activities form on the following page

Name of Proposer: _____

Person Completing Form: _____

Signature: _____ Date: _____

Attachment 1E (Continued):

Certification Regarding Lobbying

DISCLOSURE OF LOBBYING ACTIVITIES (Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352)		
1. Type of Federal Action: contract grant cooperative agreement loan loan guarantee loan insurance	2. Status of Federal Action: bid/offer/application initial award post-award	3. Report Type: initial filing material change For Material Change Only: Year _____ Quarter _____ Date of last report: _____
4. Name and Address of Reporting Entity: Prime _____ Sub-awardee _____ Tier, if known: _____ Congressional District, if known: _____	5. If Reporting Entity in No. 4 is Sub-awardee, Enter Name and Address of Prime: _____ _____ _____ Congressional District, if known: _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable:	
8. Federal Action Number, if known:	9. Award Amount, if known: \$_____	
10a. Name and Address of Lobbying Entity: (if individual, last name, first name, MI):	10b. Individuals Performing Services (including address if different from No. 10a):	
(Attach Continuation Sheet(s), if necessary)		
11. Amount of Payment (check all that apply): \$_____ actual _____ planned	13. Type of Payment (check all that apply): retainer one-time fee commission contingent fee deferred other (specify: _____)	
12. Form of Payment (check all that apply): cash in-kind; specify: <div style="text-align: right; margin-left: 100px;"> nature _____ value _____ </div>		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:		

15. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reference was placed by the user above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

Signature: _____

Print Name: _____

Title: _____

Telephone #: _____

Date: _____

Attachment 2

Insurance Requirements

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. *(Not required if Contractor provides written verification it has no employees)*
4. **Technology Professional Liability Errors and Omissions** Insurance appropriate to the Consultant’s profession and work hereunder, with limits not less than \$2,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
 - a. The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of the Agency in the care, custody, or control of the Vendor. If not covered under the Vendor’s liability policy, such “property” coverage of the Agency may be endorsed onto the Vendor’s Cyber Liability Policy as covered property as follows:
 - b. Cyber Liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of the Agency that will be in the care, custody, or control of Vendor.
 - c. The Insurance obligations under this agreement shall be the greater of 1—all the Insurance coverage and limits carried by or available to the Vendor; or 2— the minimum Insurance requirements shown in this agreement. Any insurance proceeds in excess of the specified limits and coverage required, which are applicable to a given loss, shall be available to Agency. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the indemnity or other obligations of the Vendor under this agreement.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the Entity.

Waiver of Subrogation

Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

Verification of Coverage

Contractor shall furnish the Entity with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Entity before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them.

The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

The District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Attachment 3 Sample Contract



THIS CONTRACT is made and entered into this _____ day of ____, 2019, by and between ALAMEDA-CONTRA COSTA TRANSIT DISTRICT (hereinafter “District”), a special transit district established pursuant to California Public Utilities Code, Section 24501 *et seq.*, and _____, a [description of type of entity] (hereinafter “Contractor”).

THE PARTIES AGREE AS FOLLOWS:

1. Scope of Work

Contractor shall provide A Mobile Ticketing Application in full accordance with **Request for Proposals No. 2019-1483** prepared and issued by the District, a copy of which is attached hereto and incorporated by this reference. The Contractor agrees to undertake, carry out and complete all work established herein in a professional and efficient manner satisfactory to District standards.

2. Time for Performance and Term

The Contractor shall commence work upon the execution of this Contract by both parties and, unless this Contract is terminated sooner pursuant to Section 25, shall complete the services within or before 24 months, ending no later than July 15, 2021. Services shall be performed at the District's direction and within the term/deadline set forth above hereto unless otherwise mutually agreed upon by the District and the Contractor.

By execution of this Contract, Contractor agrees to mutually terminate this Contract within 6 months after the implementation of the mobile ticketing functions through Clipper 2.0 by the Metropolitan Transportation Commission (MTC).

3. Compensation

The Contractor agrees to perform all of the services included in Section 1 of the Contract (Scope of Work) in accordance with the fees set forth in Attachment 1B hereto, not to exceed \$____, in accordance with Contractor's Proposal, and Best and Final Offer if any, as accepted the District. The total not to exceed cost/fee shall include all labor, materials, taxes, profit, overhead, insurance, subcontractor/subconsultant costs, and all other costs and expenses incurred by the Contractor.

The Contractor shall submit invoices, with a payment term of Net 30 days, at the end of each month services have been provided. Invoices shall clearly describe in detail the services rendered by Contractor during the previous month and shall state the number of hours and the applicable hourly rate of each person. Hourly rates shall be in accordance with the Contractor's Proposal, and Best and Final Offer if any, as accepted the District. The District will endeavor to pay properly submitted, undisputed invoices within 30 calendar days of initial receipt.

4. Component Parts

This Contract shall consist of the following documents, each of which is on file with the District, and is incorporated into and made a part of this Contract by reference. In the event of a conflict these documents shall control in order of precedence as set forth below:

- Contract Amendments (if any)
- Contract
- RFP Addenda
- RFP No. 2019-1483 and RFP Attachments 1, through 6
- Contractor's Proposal, as accepted by the District

5. Notices

All communications relating to the day-to-day activities of the provided services shall be exchanged between Jean Paul Popoff, the District's Claims and Liability Manager and the Contractor's account manager. All other notices, consent or other communication ("Notice") required or permitted under this Contract shall be in writing and either delivered in person, mailed or electronically delivered as follows:

THE DISTRICT

Jeanet A. Moore, Contracts Specialist
 AC Transit
 1600 Franklin Street
 Oakland, CA 94612
 (510) 891-5469
 JAMoore@actransit.org

CONTRACTOR

Contact Name/Title
 Proposer Name
 Proposer Address

 Proposer Phone #:
 Proposer Email:

A Notice shall be deemed received at the time it is personally served, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, ten (10) days after the Notice is deposited in the United States mail as above provided. Any time period stated in a Notice shall be computed from the time the Notice is deemed received. Either party may change its mailing address or the person to receive Notice by notifying the other party as provided in this section. This requirement for duplicate notice is not intended to change the effective date of the Notice sent by facsimile transmission.

6. Subcontracting

The Contractor shall not subcontract any services to be performed by it under this Contract without the prior written approval of the District, except for service firms engaged in drawing, reproduction, typing, and printing. Any subcontractors must be engaged under written contract with the Contractor with provisions allowing the Contractor to comply with all requirements of this Contract. The Contractor shall be solely responsible for reimbursing any subcontractors, and the District shall have no obligation to them. The Contractor shall be solely responsible for subcontractor insurance requirements, prompt payment affidavits (Attachment 5), certifications regarding lobbying, and DBE designations.

7. Changes

If any changes to the Scope of Work that would require a modification of the amount of compensation or the time required for performance, are sought by the Contractor, the changes must be reviewed and approved in advance of any action to implement the change by the Project Manager. In the event that the Contractor encounters any unanticipated conditions or contingencies that may affect the scope of work or services, schedule, or the amount of compensation specified herein, the Contractor shall so advise the District immediately upon notice of such condition or contingency. The written notice shall explain the circumstances giving rise to the unforeseen condition or contingency and shall set forth the proposed adjustment in schedule or compensation. This notice shall be given to the District prior to the time that the Contractor performs work or services related to any proposed adjustment.

The District may at any time by written order, make changes to within the Scope of Work described in this Contract. If such changed cause an increase in the budgeted cost of or the time required for performance of the agreed upon work, the Contractor shall notify the District in writing of the amount of time and compensation adjustments that are required.

Any and all pertinent changes shall be expressed in a written supplement to this Contract prior to implementation of such changes.

8. Indemnification

A. Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless the District, and the agents, representatives, officers, directors and employees of the District (Indemnified Group) from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of any of the following:

1. Any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work or services in the performance of this contract, including but not limited to, work or services by any subcontractor or anyone directly or indirectly employed by or contracting with a Contractor or a subcontractor or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and subcontractor's employees or subcontractors; or

2. Any allegation that materials or services provided by the Contractor infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

B. If any claim, action or proceeding is brought against the Indemnified Group, by reason of any event that is the subject of this contract and or described herein, Contractor, at its sole cost and expense, shall pay, resist or defend such claim or action on behalf of the Indemnified Group by attorney of Contractor, or if covered by insurance, Contractor's insurer, all of which must be approved by the District which approval shall not be unreasonably withheld or delayed.

The District shall cooperate with all reasonable efforts in the handling and defense of such claim. Included in the foregoing, the District may engage its own attorney to defend or assist in its defense, and the Contractor shall pay the reasonable costs and expenses thereof. Any settlement of claims must fully release and discharge the Indemnified Group from any further liability for those claims. The release and discharge shall be in writing and shall be subject to approval by the District, which approval shall not be unreasonably withheld or delayed. If Contractor, its agents or employees, neglects or refuses to defend the Indemnified Group as provided by this contract, any recovery or judgment against the Indemnified Group for a claim covered under this contract shall conclusively establish Contractor's liability to the Indemnified Group in connection with such recovery or judgment, and if the District desires to settle such dispute, the District shall be entitled to settle such dispute in good faith and Contractor shall be liable for the amount of such settlement, and all expenses connected to the defense, including reasonable attorney fees, and other investigative and claims adjusting expenses. This indemnification shall survive the termination of this Contract.

C. Insurance provisions set forth in this contract are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

9. Insurance Requirements

(See RFP Attachment 2)

10. Contractor's Status

Neither the Contractor, nor any party contracting with the Contractor shall be deemed to be and agent or employee of the District. The Contractor is and shall be an independent contractor, and the legal relationship of any persons performing services for the Contractor shall be one solely between said parties.

11. Rights in Data

The term "subject data" as used herein means recorded information, whether or not copyrighted, that is delivered under this Contract. The term includes graphic or pictorial delineation in media, text in specifications or related performance or design-type documents and machine forms. Except for its own internal use, Contractor may not publish or reproduce such data in whole or in part, nor may Contractor authorize others to do so, without the written consent of the District, until such time as the District may have either released or approved release of such data.

In the event that the Scope of Work in this Contract is not completed, all data generated under this Contract shall become subject data and shall be delivered as the District may direct.

All reports, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared, for the services to be performed by Contractor shall be and are the property of the District and the District shall be entitled to access thereto, and copies thereof, during the progress of the work.

Any and all rights, title, and interest (including, without limitation, patent rights, copyright and any other intellectual-property or proprietary right) to materials prepared under this Agreement are hereby assigned to the Contractor. The Contractor agrees to execute any additional documents which may be necessary to evidence such assignment.

The Contractor represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

12. Release of Information

Before releasing any reports, promotional materials or information prepared in connection with this Contract, the Contractor shall provide a copy or copies for first review and approval by the District. Contractor shall not use the District's logo without specific written permission from the District Designated Representative.

13. Evaluation of Contract Performance

The District reserves the right to evaluate the Contractor's performance under this Contract, including but not limited to, compliance with all Contract flow down requirements for subcontractors, and to provide feedback and require corrective action, as appropriate. The Contractor agrees to comply, including attending and participating in periodic Contract review meetings, with any District directed Contract evaluation, project improvement plan, or corrective action for fulfillment of Contract requirements. The Contractor agrees to promptly provide the District with any supporting documentation or evidence it may request, including but not limited to, subcontracts. The failure of the Contractor to provide such documentation or adequately perform under this Contract may result in suspension, termination, debarment, or any other remedy the District deems appropriate.

14. Transition/Migration Cooperation

The Contractor agrees that upon termination of this Contract for any reason, sufficient efforts and cooperation will be provided to ensure an orderly and efficient transition of services to the customer or to a different Contractor. The Contractor shall provide full disclosure to the subsequent Contractor and to the District on the equipment, software and required processes and procedures to perform the District's services. The Contractor agrees to transfer licenses or assign agreements for any software or services used to provide the services to the District or to a subsequent Contractor. The Contractor agrees to support the transition of code, data, and environments, including virtual server images if any.

15. Notice of Labor Disputes

A. If the Contractor or a subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor or subcontractor shall immediately give notice, including all relevant information, to the District's Project Manager and the District's Contracts Specialist.

B. The Contractor agrees to insert the substance of this clause, including this paragraph in any subcontract under which a labor dispute may delay the timely performance of this Contract; except that each subcontract should provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor should immediately notify the next higher tier subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

16. Removal of Contract Personnel

A. The Contractor acknowledges that any person assigned to work under this Contract must perform their duties so as to not unduly impair contract performance. By assigning a person to work under this Contract, the Contractor agrees to be responsible for the behavior of that person during contract performance.

B. The Contractor acknowledges that the District has the right to require the removal of any Contractor and any subcontractor employee that the District determines, at its sole discretion, to be negatively effecting performance of work under the contract. Examples of such behavior include, but are not limited to: (1) conduct which poses a threat to the safety of anyone working under the contract; (2) conduct which is disruptive to contract performance; (3) careless work; 4) conduct which is not appropriate when transporting participants under this Contract; and 5) conduct in violation of District policy or local, state or federal laws.

C. The District will provide written notice to the Contractor that a person's behavior is unacceptable or unduly impairing contract performance. Upon receipt of written notice from the District, the Contractor agrees to remove that person from doing any further work on the Contract, and to cause that person to be removed from providing service under this Contract. The Contractor agrees that it is not entitled to any additional costs it may incur as a result of the removal of the person from the District. The Contractor agrees to find a timely replacement and in no event shall this period exceed 72 hours from that person being removed.

17. Application of Federal, State and Local Laws and Regulations

During the Contract period of performance the Contractor shall be subject to and comply with all current and new FTA, Federal, State and/or local laws, regulations, policies, procedures, and directives, and shall adhere to all financial privacy laws and regulations.

Contractor agrees that the most recent of such Federal requirements will govern the administration of a contract at any particular time, except if there is sufficient evidence in the Contract of a contrary intent. To achieve compliance with changing requirements, the Contractor agrees to include in all agreements with subcontractors a statement that Federal requirements may change and that any changed requirement will apply.

18. Anti-Kickback and Gratuities

The Contractor is prohibited from receiving any kickbacks, gratuities, payments, merchandise, equipment, supplies, services or favors in exchange for directing additional billable services to any sub-contractor.

19. Assignment

The Contractor shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the District.

20. Dispute Resolution

The District and Contractor agree to attempt in good faith to resolve all disputes informally. The Parties agree that any dispute arising from this Contract, that is not resolved within 30 days by the Parties' representatives responsible for the administration of this Contract will be set forth in writing to the attention of the District's General Manager for resolution. If mutually agreed, the Parties may use an alternative dispute resolution process such as mediation and/or arbitration to resolve their dispute prior to initiating any formal action in court. Unless otherwise directed by the District, the Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

21. Termination

In the event the Contractor breaches the terms or violates the conditions of this Contract, and does not within ten (10) days of written notice from the District cure such breach or violation, the District may immediately terminate this agreement, and shall pay the Contractor only its allowable costs to the date of termination. The District may terminate this Agreement, in whole or in part, at any time for the District's convenience and without cause at any time by giving the Contractor written notice of termination. The Contractor will be paid for those services performed pursuant to this Contractor to the satisfaction of the District up to the date of notice of termination. The Contractor shall promptly submit its termination claim. If the Contractor has any property in its possession belonging to the District, the Contractor will account for the same and dispose of it in the manner the District directs.

22. Records

All Contractor and any subcontractor costs incurred in the performance of this Contract will be subject to audit. The Contractor shall provide the District with copies of fully executed subcontracts. The Contractor and any subcontractors shall permit the District or its authorized representatives to, within 48 hours of notice, inspect, examine, make excerpts from, transcribe, and copy the Contractor's books, work, documents, papers, materials, payrolls records, accounts, and any and all data relevant to the Contract at any reasonable time, and to audit and verify statements, invoices or bills submitted by

the Contractor pursuant to this Contract. The Contractor shall also provide such assistance as may be required in the course of such audit. The Contractor shall retain these records and make them available for inspection hereunder for a period of four (4) years after expiration or termination of the Contract.

If, as a result of the audit, it is determined by the District's Contractor or staff that reimbursement of any costs including profit or fee under this Contract was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the Contractor agrees to reimburse the District for those costs within sixty (60) days of written notification by the District.

23. Conflict of Interest

The Contractor warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §§ 1090 *et seq.* or §§ 87100 *et seq.* during the performance of services under this Contract. The Contractor further covenants that it will not knowingly employ any person having such an interest in the performance of this Contract. Violation of this provision may result in this Contract being deemed void and unenforceable.

Depending on the nature of the work performed, a Contractor of the District is subject to the same conflict of interest prohibitions that govern District employees and officials (Cal. Govt. Code Section 1090 *et seq.* and Cal. Govt. Code Section 87100 *et seq.* as well as all applicable federal regulations and laws). During the proposal process or the term of the Contract, Contractor and its employees may be required to disclose financial interests.

Depending on the nature of the work performed, the Contractor may be required to publicly disclose financial interests under the District's Conflict of Interest Code. Upon receipt, the Contractor agrees to promptly submit a Statement of Economic Interest on the form provided by the District.

No person previously in the position of director, officer, employee or agent of the District may act as an agent or attorney for, or otherwise represent, the Contractor by making any formal or informal appearance, or any oral or written communication, before the District, or any officer or employee of the District, for a period of twelve (12) months after leaving office or employment with the District if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant or contract.

The Contractor shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Contract and other solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to the District; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other contract.

The Contractor shall not engage the services of any subcontractor or independent Contractor on any work related to this Contract if the subcontractor or independent contractor, or any employee of the subcontractor or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Contract.

If at any time during the term of this Contract, the Contractor becomes aware of an organizational conflict of interest in connection with the work performed hereunder, the Contractor immediately shall provide the District with written notice of the facts and circumstances giving rise to this organizational conflict of interest. The Contractor's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the term of this Contract, the District becomes aware of an organizational conflict of interest in connection with the Contractor's performance of the work hereunder, the District shall similarly notify the Contractor. In the event a conflict is presented, whether disclosed by the Contractor or discovered by the District, the District will consider the conflict presented and any alternatives proposed and meet with the Contractor to determine an appropriate course of action. The District's determination as to the manner in which to address the conflict shall be final.

During the term of this Contract, the Contractor must maintain lists of its employees, and the subcontractors and independent Contractor used and their employees. The Contractor must provide this information to the District upon request. However, submittal of such lists does not relieve the Contractor of its obligation to assure that no organizational conflicts of interest exist. The Contractor shall retain this record for five (5) years after the District makes final payment under this Contract. Such lists may be published as part of future District solicitations.

The Contractor shall maintain written policies prohibiting organizational conflicts of interest and shall ensure that its employees are fully familiar with these policies. The Contractor shall monitor and enforce these policies and shall require any subcontractors and affiliates to maintain, monitor and enforce policies prohibiting organizational conflicts of interest.

Failure to comply with this section may subject the Contractor to damages incurred by the District in addressing organizational conflicts that arise out of work performed by the Contractor, or to termination of this Contract for breach.

24. Non-Discrimination Assurance – Title VI of the Civil Rights Act

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 U.S. DOT-assisted contracts. Further, the Contractor agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. The Contractor shall obtain the same assurances from its joint venture partners, subcontractors, and subconsultants by including this assurance in all subcontracts entered into under this 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 District deems appropriate, which may include, but is not limited to withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the contractor from future bidding as non-responsible.

During the performance of this Contract, Contractor and its subconsultants and 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, physical disability (including HIV and AIDS), mental

disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subconsultants or subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) *et seq.*) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Contract.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

25. Equal Employment Opportunity

In connection with the performance of this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The Contractor shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

26. Attorney's Fees

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Contract or to determine the rights of the parties under this Contract, the prevailing party in said proceeding shall recover, in addition to all court costs, reasonable legal fees.

27. Waiver

Failure of any party to exercise any right or option arising out of a breach of this Contract shall not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach.

28. Applicable Law and Venue

This Contract, its interpretation and all work performed under it shall be governed by the laws of the State of California. In the event of a dispute or breach of contract, venue shall be in Alameda County, California.

29. Binding on Successors

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

30. Third Party Beneficiaries

This Contract is not for the benefit of any person or entity other than the parties.

31. Severability

If any provision of this Contract shall be deemed invalid or unenforceable, that provision shall be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Contract, and in any event, the remaining provisions of this Contract shall remain in full force and effect.

32. Entire Contract; Modification

This Contract, including any attachments, constitutes the entire Contract between the parties with respect to the subject matter hereof and may not be amended except by a written amendment executed by authorized representatives of both parties. In the event of a conflict between the terms and conditions of this Contract and the attachments, the terms of this Contract will prevail.

Attachment 4 - Federal Clauses

In any and all instances where the Contract terms conflict with Federal Clauses, the latter will prevail.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The provisions of this Contract include, in part, certain Standard Terms and Conditions required by the US Department of Transportation (DOT), whether or not expressly set forth in this solicitation. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, revised 2012 and any future revisions, 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 contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any District requests which would cause the District to be in violation of the FTA terms and conditions.

1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The District and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying resulting contract, absent the express written consent by the Federal Government, the Federal Government is not a party to any contract and shall not be subject to any obligations or liabilities to the District, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

2. FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD

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 or it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by the 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. § 5323(I)) on the Contractor, to the extent the Federal Government deems appropriate.

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

3. ACCESS TO THIRD PARTY CONTRACT RECORDS

Contractor shall provide all authorized representatives of the District, the FTA Administrator, the State Auditor and the Comptroller General of the United States access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, copies, examinations, excerpts and transcriptions.

Contractor also agrees to maintain, and require its subcontractors of all tiers, 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 the same until the District, 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. The Contractor agrees to permit the FTA and its contractor's to access the sites of performance under this contract as reasonably may be required.

4. CHANGES TO FEDERAL REQUIREMENTS

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 Agreement (Form FTA MA (24) dated October 1, 2017) between the District 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.

5. CIVIL RIGHTS REQUIREMENTS

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.

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 the 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.

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 the employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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.

6. TERMINATION / RESOLUTION OF DISPUTES

Termination for Convenience (General Provision) The District may terminate the contract, in whole or in part, at any time by written notice to the Contractor when it is in the District's best interest. The Contractor may be entitled to costs associated with the work performed, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the District to be paid the Contractor. If the Contractor has any property in its possession belonging to the District, the Contractor will account for the same, and dispose of it in the manner the District directs.

Termination for Default (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the District may terminate the contract for default. Termination shall be effected by serving a notice of termination to the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the District that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the District, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Opportunity to Cure (General Provision) The District in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 45 days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to the District's satisfaction the breach or default of any of the terms, covenants, or conditions of the contract within 45 days after receipt by Contractor of written notice from the District setting forth the nature of said breach or default, the District shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the District from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

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

Performance During Dispute - Unless otherwise directed by District, Contractor shall continue performance under the contract while matters in dispute are being resolved.

Alternative Dispute Resolution/Mandatory Arbitration: In the event that any controversy, claim or dispute between the District and the Contractor arising out of or related to this contract, or the breach hereof, that has not been resolved by informal discussions and negotiations, either party may, by written notice to the other, invoke the formal dispute resolution procedures set forth herein. The written notice invoking these procedures shall set forth in reasonable detail the nature, background and circumstances of the controversy claim or dispute. During the thirty (30) days following said written notice, the parties shall meet, confer and negotiate in good faith to resolve the dispute. Either party may, during said thirty (30) day period, request the utilization of the services of a professional mediator, and the other party or parties to this dispute shall cooperate with such request and share the reasonable costs of such mediator.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the District and the Contractor arising out of or relating to the resulting agreement or contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of California.

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

7. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The 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. There is no DBE or SBE goal for this contract opportunity.

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 District deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

Contractors are required to document sufficient DBE participation to meet this goal or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following [concurrent with and accompanying an initial proposal, and prior to award]:

- a) The names and addresses of DBE firms that will participate in this contract;

- b) A description of the work each DBE will perform;
- c) The dollar amount of the participation of each DBE firm participating;
- d) Written documentation of the Contractor's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
- e) Written confirmation from the DBE that it is participating in the contract as provided in the prime Contractor's commitment; and
- f) If the contract goal is not met, evidence of good faith efforts to do so.

Contractors must present the information required above as a matter of responsiveness [with initial proposals, prior to contract award] (see 49 CFR 26.53(3)).

The Contractor is required to pay its subcontractors performing work related to the contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the District. In addition, the Contractor may not hold retainage from its subcontractors.

The Contractor must promptly notify the District, whenever a DBE subcontractor performing work related to the contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the District.

8. SUSPENSION AND DEBARMENT

This contract is a covered transaction for purposes of 2 CFR 180. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2CFR 180.940 and 180.935.

The Contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

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

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

9. ANTI-LOBBYING REQUIREMENTS & CERTIFICATION

Contractors who apply 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 District.

10. CLEAN AIR

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

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

11. CLEAN WATER REQUIREMENTS

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

12. ENERGY CONSERVATION REQUIREMENTS

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act of 1975.

13. AMERICANS WITH DISABILITIES ACT (ADA)

The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 *et seq.*; section 504 of the Rehabilitation Act of 1973, amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this contract.

14. FLY AMERICA REQUIREMENTS

The Contractor agrees to comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 CFR Part 301.10, which provide that recipients and sub recipients of Federal funds and their Contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property to the extent such service is available, unless travel by foreign air carrier is a matter of necessity as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this Section in all Subcontracts that may involve international air transportation.

15. PROMPT PAYMENT OF SUBCONTRACTORS

The Contractor shall pay any subcontractors approved by the District for work that has been satisfactorily performed no later than seven (7) days from the date of the contractor's receipt of progress payments by the District. Within sixty (60) days of satisfactory completion of all work required of the subcontractor, contractor shall release any retained payments withheld to the subcontractor. The contractor shall complete and sign a Prompt Payment Act Affidavit related to invoices submitted for services performed under this contract.

16. 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 federal Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

(End of Attachment 4)

Attachment 5 – Prompt Payment Affidavit

This form **MUST** be submitted with each Request for Payment

Contractor shall initial next to each applicable statement below, confirming continued compliance with the Prompt Payment provisions of the "Contract".

Re: Payment Request No. _____

I, _____, the _____
Name Title (e.g., President, VP, etc.)

of _____, do state the following with regard to
Name of Company/Firm

Payment(s) made under Contract No. _____ ("Contract"):

1. Subcontractors, at the first tier, both DBE and non-DBE, that completed work and were listed for payment on the prior Request for Payment No. _____, were paid no later than seven (7) days after "Company" received payment from the District.
2. Copies of paid invoices and canceled checks for subcontractors at the first tier that were paid under prior requests for payment have been provided to the Contracts Compliance Department. In addition, Contractor has attached to the current Request for Payment all lien waivers for prior subcontractor payments, and any other documentation required by the District.¹
3. All retained amounts withheld from any subcontractor that satisfactorily completed its portion of the contract work, including punch list items, were paid to the subcontractor(s) no later than thirty (30) days after it satisfactorily completed its work, whether or not the District has paid said retained amounts to "Company".²
4. There was no delay in or postponement of any payment owed to a subcontractor, whether periodic payment or retained amount.

*Note: if there are **any exceptions** to the above statements, attach written details and supporting documentation.*

¹ Failure to attach required documentation to the Payment Request or forward cancelled checks and invoices to the District's Contract Compliance Department may cause this Payment Request to be delayed or rejected by the District.

² Documentation evidencing payment of each retained amount must be attached.

Attachment 5: Prompt Payment Affidavit

List of First Tier Subcontractor(s)

Subcontractor(s)	DBE	SBE	Contract Amount	Current Invoice Amount	Total Amount Paid to Date	Balance
	<input type="checkbox"/>	<input type="checkbox"/>				
	<input type="checkbox"/>	<input type="checkbox"/>				
	<input type="checkbox"/>	<input type="checkbox"/>				
	<input type="checkbox"/>	<input type="checkbox"/>				
	<input type="checkbox"/>	<input type="checkbox"/>				
	<input type="checkbox"/>	<input type="checkbox"/>				
	<input type="checkbox"/>	<input type="checkbox"/>				
	<input type="checkbox"/>	<input type="checkbox"/>				
	<input type="checkbox"/>	<input type="checkbox"/>				
	<input type="checkbox"/>	<input type="checkbox"/>				

Contractor Certification

Contractor acknowledges that Payment Request(s) may be delayed or rejected until retained amounts withheld from any subcontractor have been resolved. Failure to comply with the Prompt Payment provisions may be considered a breach of the "Contract", which may lead to any remedies permitted under law, including, but not limited to Contractor debarment.

Signature

Date

(End of Prompt Payment Affidavit)

Attachment 6 – Contractor Confidentiality and Integrity Statement

AC Transit's Information Services department is responsible for safeguarding the integrity and confidentiality of data in District computer files regardless of the source of the data or medium on which they are stored. All data generated from the original source data shall remain property of AC Transit (e.g. reports, metrics and benchmarks.) The control of the disclosure of data shall be retained by AC Transit.

I/we, as a representative of _____, understand that I/we act as an extension of AC Transit's Information Services department and therefore I/we are responsible for safeguarding District data included within the scope of services of contract _____.

I/we will not use, disclose or modify District data without the written authorization of AC Transit. I/we agree to take all necessary precautions to prevent unauthorized use, disclosure or modification of District data.

I/we will alert AC Transit immediately of any situation in which any data under my/our responsibility has or may have been accessed, disclosed or modified without authorization.

Penalty for unauthorized use, disclosure or modification may result in the District finding my company in violation of the contract and may mean persecution under applicable State or Federal law.

I, the Undersigned, hereby affirm that I have read and agree to abide by the terms above.

Contractor Signature: _____

Date: _____

Contractor Name: _____