Request for Proposals (RFP)
NO. 2019-10379

Bus Rapid Transit (BRT) Sponsorship Consultant

November 27, 2018

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
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**RFP NO. 2019-10379**

*AC Transit*

November 2, 2018

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RFP Release Date: November 27, 2018  
Questions Due: December 3, 2018  
Response To Questions: December 6, 2018  
Proposals Due: December 14, 2018
NOTICE INVITING PROPOSALS

NOTICE IS HEREBY GIVEN that the Alameda-Contra Costa Transit (District) will receive proposals on December 14, 2018 Pacific Time in writing by email to msilk@actransit.org, for the following:

REQUEST FOR PROPOSALS (RFP) NO. 2019-10379
BRT SPONSORSHIP CONSULTANT

The District seeks proposals from qualified firms to provide consultant services for the Bus Rapid Transit sponsorships.

All questions and requests for modifications and/or clarification during the solicitation phase of these services shall be submitted by electronic transmission to Michael Silk, msilk@actransit.org (as detailed in section II3A). Questions and requests for modifications and/or clarification must be received no later than December 3, 2018, 1 pm Pacific Time. The District’s written responses to questions and requests for modifications and/or clarification will be issued by December 6, 2018. Only signed Addenda, issued by the Purchasing Department’s authorized personnel, are binding. Proposers are required to acknowledge receipt of all Addenda, if any, with their proposals.

Proposers are instructed to submit technical and price proposals to Michael Silk, msilk@actransit.org or submit a hardcopy to 1600 Franklin Street Oakland, CA 94612. Proposals shall be clearly marked indicating the Proposer’s name and the RFP number. If personally delivering your Proposal, please allow adequate time for signing in with the security desk in the first-floor lobby. Proposals submitted after 5 pm on December 14, 2018 will not be accepted.

Submission of a Proposal shall constitute a firm offer to the District. No Proposer may withdraw its Proposal for a period of 90 calendar days after the Proposal submission due date. The District reserves the right to reject any or all Proposals, to waive any irregularity or informalities in any Proposal or in the Proposal procedure, and to negotiate with any individual, qualified firm, or organization. Each Proposer will be notified in writing of the intent to award a contract prior to the regularly scheduled Board of Directors meeting.

Proposers who are invited to an interview are responsible for all associated costs. Interviews, if held, are tentatively scheduled for the week of December 15, 2018 and will be held at the District’s General Office, 1600 Franklin Street, Oakland California. This location and date are subject to change. Attendees at an interview should be restricted to those individuals who will have direct involvement with the provision of the services. The District expects that, at a minimum, the proposed Project Manager will attend the oral interview; other Key Personnel may also attend.

The contract resulting from this RFP may be funded in whole or in part by the Federal Transit Administration (FTA). The successful Proposer shall cooperate with the District to ensure the full conformance with its funding agreements with the FTA. The successful Proposer shall comply with all terms and conditions prescribed for third party contracts by the FTA, if applicable.

The District hereby notifies all Proposers that it is the policy of the District to ensure non-discrimination in the award and administration of all contracts and to create a level playing field on which Disadvantaged Business Enterprises (DBEs) can compete fairly for contracts and subcontracts relating to the District’s construction, procurement, and professional services activities. To this end, the District has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside of the DBE Program. In connection with the performance of this Contract, the Proposer will cooperate with the District in meeting these commitments and objectives.
In connection with the performance of the resulting Contract, full compliance with all applicable Safety and Health Standards and with all applicable laws and regulations concerning Equal Employment Opportunity will be required. The major provisions of the District’s policy are outlined in the RFP.

Dated at Oakland, this 27 day of November, 2018.

Michael Silk, Msilk@actransit.org
ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

REQUEST FOR PROPOSALS

FOR

BRT Sponsorship Consultant

RFP No. 2019-10379

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 sponsorship consultant services as set out in Part III, Scope of Services. The District invites 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 rejected.

2. Schedule.

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

<table>
<thead>
<tr>
<th>Solicitation Event</th>
<th>Date</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distribution of RFP</td>
<td>November 27, 2018</td>
<td>1 pm</td>
</tr>
<tr>
<td>Proposer’s deadline to submit questions, requests for modifications and/or clarifications</td>
<td>December 3, 2018</td>
<td>1 pm</td>
</tr>
<tr>
<td>District’s response to questions, requests for modifications and/or clarifications</td>
<td>December 6, 2018</td>
<td>5 pm</td>
</tr>
<tr>
<td>Proposals Due</td>
<td>December 14, 2018</td>
<td>5 pm</td>
</tr>
</tbody>
</table>

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.

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 Michael Silk, mslk@actransit.org or delivered to the attention of Michael Silk at 1600 Franklin Street, 6th Floor, Oakland, CA 94612. Questions and requests for modifications and/or clarification must be received no later than December 3, 2018 Pacific Time.

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 as determined by the District.

B. Proposal Due Date.

Final proposals shall be mailed, emailed or hand delivered to AC Transit, Purchasing Department, Attn: Michael Silk, mslk@actransit.org, 1600 Franklin Street, 6th Floor, Oakland, CA 94612 by December 14, 2018 5 pm Pacific Time. If hardcopy, please include three copies. Acceptable softcopy formats include .pdf, .docx, .xlsx, .ppt on a flash drive or a via email. Final proposals received after the time and date specified will not be considered. All packages shall be sealed and clearly marked as:

RFP No. 2019-10379
BRT Sponsorship Consultant
December 14, 2018 at 5 pm PST
Attn: Michael Silk
1600 Franklin Street, 6th Floor
Oakland, CA 94612

Submission of a Proposal shall constitute a firm offer to the District for 90 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 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 Proposals received and one or more finalists may be selected. These finalists may be invited to an oral interview. Please reserve the week of December 4, 2018 as the tentative week planned for finalist interviews, should interviews be conducted. It is requested that the attendees be restricted to those individuals who will have direct involvement with the proposed services.

C. Project Background.

In 2014, AC Transit’s Board of Directors and the Bus Rapid Transit (BRT) Policy Steering Committee approved a Sponsorship Strategy to help subsidize the operation and maintenance costs associated with the project. Sponsorships would be marketed in exchange for naming rights of BRT service, BRT lines, the 34 BRT stations, and/or through other BRT assets such as signage, collateral materials, etc. The Bus Rapid Transit project began construction in 2016, and due to certain
construction deferments, this sponsorship plan was put on hold until there was significant progress made on the construction.

The District recently decided to resume the Sponsorship Strategy by engaging a consultant to continue development of materials, relationships and revenue from potential sponsors of the BRT project.

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 (listed below). The Proposal shall be divided into sections with index tabs and cover pages identifying the contents of the sections. 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 e-mail address. The following information must be provided:

- Introduce the firm and summarize its qualifications.
- Name(s) of authorized principals with authority to negotiate and contractually bind the firm.
- A statement that binds the Proposer to the proposed Scope of Services and price proposal for 365 calendar days.
- Indicate whether there are any conflicts of interest that would limit the Proposer’s ability to provide the requested services. See Section IV(8).
- Acknowledge receipt of all addenda by including the addendum number for each addendum received.

B. Technical Proposal.

The Proposer must have relevant, successful experience in the development of new sources of revenue through sponsorships while preserving the brand of the contracting agency. Experience serving large urban public-sector organizations with multiple stakeholders is desired.

Proposer shall describe the approach to the project as detailed in Section III, Scope of Services.

In summary the tasks required by the successful bidder will be the following:

1. Develop Sponsorship and Naming Rights Program and Proposal Materials
2. Create Justifiable and Reasonable Valuations
3. Secure Commitments from Potential Sponsors
The Proposer must comply with all conditions in AC Transit Board Policy 451 – Advertising on District Property and Board Policy 457 – Sponsorship and Naming Rights.

Additionally, sponsorship materials must comply with all conditions set forth in California Business & Professions Business and Professions Code 5408.5 of the Outdoor Advertising Act, Found here [http://www.dot.ca.gov/trafficops/oda/docs/ODA_Act_&_Regulations.pdf](http://www.dot.ca.gov/trafficops/oda/docs/ODA_Act_&_Regulations.pdf). Proposed sale of naming rights will require the issuance of both outdoor advertising and encroachment permits. Additionally, the location of advertising must be restricted to bus shelters and benches that service AC Transit's Bus Rapid Transit, or as otherwise prescribed by the state Outdoor Advertising Program.

Sponsors and sponsorship agreements are subject to final approval and review by the District.

C. Personnel Resources.

Each proposal should include the following: A brief description of the Proposer's qualifications for this Scope of Services and previous experience on similar or related work performed for local governmental agencies, including transportation agencies, if any. This description must include a summary of work performed, the period over which the work was completed, for whom it was performed, the location where it was performed, and the size of the Proposer’s effort (i.e., cost and period of time) and the personnel needed to complete the effort.

Additionally, the proposal shall include the names of all key personnel who would be directly engaged in the performance of the Scope of Services. For each of these individuals, please submit: 1) the roles and responsibilities specific to the work to be performed, 2) the estimated percentage of time to be spent for each functional role, 3) abbreviated resumes featuring the experience, qualifications, and skills which are most relevant to the District’s requirements, and/or 4) copies of all certifications, trainings, accreditations and/or licenses (optional). Resumes should include dates, number of years of experience and qualifications for the project or alternative information that would aid in the successful completion of the project.

D. Proposer Qualifications and Reference Questionnaire.

All Proposers must submit the Proposer Qualifications and Reference Questionnaire (Attachment A).

Proposers shall provide demonstrated examples of success from three similar projects each described with goals, challenges, and client’s return on the investment on the Proposer’s services.

Provide an organizational chart that identifies the proposed consultant team with years of experience. Provide the firm’s size, number of employees, primary type of business, other affiliated businesses or services.

E. Price Proposal.

A Price Proposal based upon a fixed all-inclusive fee structure for the BRT Sponsorship Consultant services must be submitted on the Price Proposal Form (Attachment B). Please separate the rates and material costs for each task listed in
the Scope of Services. Included in the rates shall be all labor charges, overhead, fee, profit and taxes. Included in the materials costs shall be taxes, insurance, subcontractor costs, travel expenses, telephone costs, copying costs, profit, administrative fees, and all other costs as required for the completion of the project.

Proposers agree to permit access to financial records for a Pre-Award Audit to verify labor rates, overhead rates, and other information should the District determine that such an audit is required prior to negotiations or award of a Contract.

F. Required Forms.

Proposers will submit all required forms, specifically:

1) Proposer Qualification and Reference Questionnaire (Attachment A)
2) Price Proposal Form (Attachment B)

G. Exceptions to Sample Contract.

A Sample Contract is attached to this solicitation. If a Proposer desires any major modification of these terms, this should be submitted with the proposal. For all minor modifications to the Sample Contract, they will have the opportunity to negotiate these terms before the contract is signed by both parties. 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 of Proposals

A. Evaluation Procedure

Proposals will be evaluated for completeness and responsiveness to this RFP’s stated requirements (i.e. Section III - Scope Of Services), minimum qualification requirements, and the weights assigned to each evaluation factor. The District may reject any Proposal in which the technical approach, qualifications, or costs are not deemed to be acceptable. 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.

Competitive range will be determined by the standards listed Section II A-F for responsive and responsibility of each proposal. Proposers determined to be within 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. Contract negotiations or discussions will not be held during these sessions.

During the evaluation process, no information, financial or otherwise, will be provided to any Proposer about any of the Proposals. Proposals will be evaluated and scored based on a Committee evaluation of the weighted portions listed in subsection B, Evaluation Criteria.

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 Committee 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 weighted Proposal based upon the BAFO there will be no further negotiation.

The District also reserves the right to further reduce the competitive range at any point during the evaluation process. Proposers no longer remaining in the competitive range will be notified by the District as soon as practicable.

B. Evaluation Criteria.

Proposals that are in the competitive range will be independently evaluated. Based upon individual evaluations, the District’s Procurement staff will record and calculate the raw evaluation scores of the Committee and apply the established score per proposal. The following weighted method of scoring will be used in evaluating proposals:

<table>
<thead>
<tr>
<th>WEIGHT ASSIGNMENT FOR PROPOSAL EVALUATION CRITERIA</th>
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<tbody>
<tr>
<td><strong>Evaluation Criteria</strong></td>
</tr>
<tr>
<td>1. Technical Ability to Perform Required Services</td>
</tr>
<tr>
<td>2. Past Performance, Experience and References</td>
</tr>
<tr>
<td>3. Price Proposal</td>
</tr>
<tr>
<td><strong>TOTAL POSSIBLE POINTS</strong></td>
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The Evaluation Criteria listed above will be assessed using a weighted scale of “Unacceptable” to “Excellent” based on the following details and definitions below:

a) Technical Ability to Perform Required Services: The extent to which the proposer can demonstrate a firm understanding of the RFP requirements, their capacity and strategy to perform the proposed scope of work in Section III. Evaluations will be based on the proposer’s ability to meet the necessary requirements needed to develop successful sponsorship opportunities.

b) Past Performance, Experience and References: Proposers must be able to describe sound methodologies and provide examples of any step, time, and cost savings achieved under similar contracts (ideally with similar customers). Proposers should provide relevant and/or current information of past performance (within the past three years) by identifying the agency, contact person, and contact person’s telephone number for whom the service was provided. Proposals may include the level of achieved client satisfaction for past performances.

c) |
<table>
<thead>
<tr>
<th><strong>Evaluation</strong></th>
<th><strong>%</strong></th>
<th><strong>Technical Points</strong></th>
<th><strong>Past Points</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Excellent</td>
<td>100%</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Good</td>
<td>75%</td>
<td>30</td>
<td>22.5</td>
</tr>
<tr>
<td>Satisfactory</td>
<td>50%</td>
<td>20</td>
<td>15</td>
</tr>
<tr>
<td>Unacceptable</td>
<td>0%</td>
<td>0</td>
<td>0</td>
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</tbody>
</table>
Excellent: Fully compliant with RFP requirements and with desirable strengths or betterments; no errors, or risks, or weaknesses or omissions noted.

Good: Compliant with RFP requirements; some minor errors, or risks, or weaknesses or omissions.

Satisfactory: Minimally compliant with RFP requirements; errors, or risks, or weaknesses or omissions; possible to correct and make acceptable.

Unacceptable: Totally deficient and not in compliance with RFP requirements.

d) Price Proposal: The Evaluation Committee will evaluate pricing proposals independently and assign scores to each price proposal based on the best value to the District for each task (Attachment B). This will be compared to the Proposer’s technical ability, past performance and lowest price in the competitive range.

4. Recommendation of Award.

The District’s Evaluation Committee will recommend the proposal which it finds to be the best value to the District based on the calculated results. The results of the evaluations and the selection of a proposal for award will be documented.

III. SCOPE OF SERVICES

1. Task 1 - Develop Sponsorship and Naming Rights Proposal Materials

Proposer shall develop a sponsorship package that is suitable to present to potential corporate sponsors. This package shall demonstrate how a BRT sponsorship will increase the sponsoring company’s brand awareness, communicate the sponsor’s commitment to the community and deliver a return on investment. The package will offer separate options for naming rights or levels of sponsorship.

Deliverables:
Comprehensive Sponsorship and Naming Rights Sales Package consisting of a relevant sponsorship and naming rights prospectus, electronic presentation materials.

2. Task 2 - Create Justifiable and Reasonable Valuations

Proposer shall work with AC Transit staff to identify and prioritize current and future District assets that could be available for sponsorship opportunities. Based on the available BRT assets, Proposer shall enumerate tangible and intangible benefits to potential sponsors and valuate each asset type. Proposer will work with staff to develop a final valuation to determine a total value for the sponsorship or naming rights.

Deliverables:
Valuation and enumeration of sponsorship assets Report on value and nature of other sponsorship and naming rights agreements, including comparable transit agencies, other entities in the Bay Area, other public sector organizations.

3. Task 3 Commitments from Potential Sponsors

Proposer shall develop a list of potential viable sponsors. The potential sponsors identified should have demonstrable commitment to the Bay Area community. Potential sponsors will
have a positive business reputation in the marketplace, and possess the financial capacity to enter into a long-term sponsorship.

Proposer will be responsible for the logistics of presenting this material, making the presentation to the potential sponsor pool, negotiating any sponsorship agreements, and presenting a final recommendation to AC Transit staff and Board of Directors.

Deliverables:
A vetted list of potential sponsors with a schedule/timeline for pitching sponsorships. Final sponsorship and naming rights pitch materials, asset valuations, relationship management data and draft sponsorship agreement terms. Additionally, the successful proposer may be responsible for a final report and executive summary to be presented to AC Transit's Board and Project Steering Committee.

This work is estimated to be completed within 6 months to a year from the execution of the resulting contract. The term of the resulting contract will be for one year.

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 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 contact the District’s Contracts department at contracts@actransit.org for a copy thereof.


3. DBE Program/SBE Goal

There is no Disadvantaged Business Enterprises (DBEs) or Small Business Enterprise (SBE) utilization goal for this contracting opportunity.

In accordance with District Policy 460: Disadvantaged Business Enterprise, the District hereby notifies all Bidders that it is the policy of the District to ensure non-discrimination on the basis of race, color, sex or national origin in the award and administration of contracts that it awards. It is the intention of the District to create a level playing field on which DBE can compete fairly for contracts and subcontracts relating to the District’s construction, procurement and professional services activities. Bidders are urged to obtain DBE
participation on this project in support of the District’s overall DBE goal. Bidders are encouraged to attend the pre-bid conference to better understand the applicable DBE requirements as they pertain to this opportunity.

After contract award, all DBE utilization, including, but not limited to prompt-payment adherence, shall be captured and submitted by the prime contractor and its subcontractors electronically via a system specified by the District. Contractors unfamiliar with this program shall be afforded requisite training at no cost to the contractor.

4. **Vendor Registration.**

Online Vendor Registration is required prior to contract award. Proposers should access [www.actransit.org/purchasing/acpronet/?page=register](http://www.actransit.org/purchasing/acpronet/?page=register) 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 contracts@actransit.org 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 whosoever 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/or formal Notice to Proceed or limited Notice to Proceed for any contract.

6. **Waiver.**

By submitting a Proposal, the 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 in the Contract Documents; 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 Documents.

7. **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.

8. 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 the resulting 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 may be required to 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 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.
9. **Insurance**

Insurance requirements are listed in Exhibit A.

Failure to meet the insurance requirements as listed in Exhibit A, may result in disqualification from award.

10. **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 or an executed contract 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 or executed contract, unless it is in writing and available for disclosure to the general public.

**V. ATTACHMENTS AND EXHIBITS**

- ATTACHMENT A - PROPOSER QUALIFICATIONS AND REFERENCE QUESTIONNAIRE .................................................................................................................. 16
- ATTACHMENT B - PRICE PROPOSAL FORM ................................................................................................................................. 20
- ATTACHMENT C - PROMPT PAYMENT AFFIDAVIT ...................................................................................................................... 21
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- EXHIBIT B - SAMPLE CONTRACT ......................................................................................................................................... 26
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Attachment A
Proposer Qualifications and Reference Questionnaire

Proposer Name: __________________________________________

A. How many years has your organization been in business as a Contractor under your present business name? _____________

1. As a general contractor/project lead? _______________________

2. As a subcontractor? _______________________

B. 3-Year Annual Gross Sales

<table>
<thead>
<tr>
<th>Year:</th>
<th>Year:</th>
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</table>

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

<table>
<thead>
<tr>
<th>Client</th>
<th>Location (city/state)</th>
<th>Type of Work</th>
<th>Value of Work</th>
<th>Percent Completed of Overall Project</th>
<th>Scheduled Completion Date</th>
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</table>


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

<table>
<thead>
<tr>
<th>Client</th>
<th>Location (city/state)</th>
<th>Type of Work</th>
<th>Value of Work</th>
<th>Year Started</th>
<th>Year Completed</th>
</tr>
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(Attach additional sheets if necessary.)

E. 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.

<table>
<thead>
<tr>
<th>Individual's Name</th>
<th>Title</th>
<th>Years of Professional Experience</th>
<th>Type of Work</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>
F. **References:** List a minimum of two Professional references for whom your organization has performed work similar in nature to the scope of services outlined in this solicitation. Do not list AC Transit as a reference.

<table>
<thead>
<tr>
<th>Business Name</th>
<th>Contact Person</th>
<th>Phone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

(Attach additional sheets if necessary)

G. Have you or your organization, or any officer or partner thereof, failed to complete a contract?  
   [ ] No  [ ] Yes  If yes, please explain below. Attach additional sheets if necessary.

__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

H. Is any pending litigation or adverse findings against your organization?  
   [ ] No  [ ] Yes  If yes, please explain below. Attach additional sheets if necessary.

__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

I. 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.
J. Organizational Chart/Key Personnel

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: _______________________

(End of Attachment A)
Attachment B - Price Proposal form

Following price proposal is inclusive of all costs, direct/indirect, travel, materials, etc.

<table>
<thead>
<tr>
<th>Task</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Task 1 - Develop Sponsorship and Naming Rights Program and Proposal</td>
<td>$</td>
</tr>
<tr>
<td>Materials</td>
<td></td>
</tr>
<tr>
<td>Task 2 – Create Justifiable and Reasonable Asset Valuations</td>
<td>$</td>
</tr>
<tr>
<td>Task 3 – Secure Commitments from Potential Sponsors</td>
<td>$</td>
</tr>
</tbody>
</table>
Attachment C - 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.
Exhibit A - Insurance Requirements

A. The Contractor is primarily responsible for the risk management of its work under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. The District reserves the right to amend the requirements herein at any time during the term of this Contract, subject to at least sixty (60) days written notice and an appropriate adjustment of the compensation terms of the Contractor to offset any attributable increase in the Contractor’s costs. Any and all of the Contractor’s sub-contractors must meet the requirements of this Section and Contractor shall include the terms of this Section in each contract with sub-contractors.

B. Prior to beginning the work under this Contract and without limiting any liabilities or other obligations of Contractor, Contractor shall obtain and maintain, and/or cause to be obtained and maintained, the required forms and minimum amounts of insurance coverages as outlined below. Contractor’s responsibility and liability for the services provided by its subcontractors is not limited in any fashion by the types and limits of subcontractors’ insurance. Coverages shall be in full force and effect during the terms of this Contract.

C. All Insurance Coverages

Upon execution of the Contract, all required insurance coverages must be evidenced to the District through receipt of the acceptable certificate(s) of insurance and the appropriate policy endorsements, executed by a duly authorized representative of each insurer, showing full compliance with the insurance requirements set forth in this Section.

i. Failure of the District to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of the District to identify a deficiency from the evidence that is provided shall not be construed as a waiver of Contractor’s obligation to maintain such insurance.

ii. Certificate(s) of insurance and the appropriate policy endorsement are to be emailed or mailed to the following address or such other addresses as designated by the District:

   Michael Silk
   Contracts Specialist
   AC Transit
   1600 Franklin Street, 6th Floor
   Oakland, CA 94612
   Email: msilk@actransit.org

iii. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or 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 District. No representation is made that the
minimum insurance requirements of this agreement are sufficient to cover the indemnification obligations of the Contractor under this agreement.

iv. Failure to maintain the required insurance may result in the termination of this Contract at the District's option.

v. If the Contractor fails to maintain the insurance as set forth in this Section, the District shall have the right, but not the obligation, to purchase said insurance at Contractor's expense.

vi. Contractor shall provide certified copies of all insurance policies required in this Section within ten (10) days of the execution of the resulting contract.

vii. The Contractor's insurance company(ies) and third-party administrators are subject to approval by the District as well as any use of partial or full self-insurance programs. This includes the use and amounts of deductibles and/or self-insured retentions.

viii. Each insurance policy shall not be subject to lapse, cancellation or material change in coverage unless at least sixty (60) days prior to written notice is provided to the District.

ix. Each insurance policy shall be written on a primary coverage basis, including any self-insured retentions, unless expressly approved by the District, in writing.

x. With the exception of the Workers’ Compensation policy, each insurance policy shall include, by specific endorsement the following as additional insureds:

   a. “The District, its Directors, agents, officers, and employees.”

   This endorsement shall be included on the Certificate of Insurance as well.

xi. In addition, any person or entity shall be added as an additional insured upon the request of the District to the Contractor.

xii. Any failure by the Contractor to comply with the reporting requirements of the required insurance coverage shall not affect the coverage provided to the District, its Directors, agents, officers, and employees.

xiii. If Contractor’s liability policies do not contain a separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

xiv. To the extent permitted by insurance, Contractor waives all rights of subrogation or similar rights against the District and its members and each of their respective agents, officers, employees and directors.

xv. By requiring the insurance in this Section, the District does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor liability under the indemnities granted by the District in this Contract.
xvi. Claims-Made Insurance

If any insurance specified below shall be provided on a claims-made basis, then in addition to coverage requirements above, such policy shall provide that:

a. Policy retroactive date coincides with or precedes the Contractor’s start of work (including subsequent policies purchased as renewals or replacements).

b. Contractor shall make every effort to maintain similar insurance for at least five (5) years following project completion, including the requirement of adding all named insureds.

c. If insurance is terminated for any reason, Contractor agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from work performed in connection with this Contract or Permit.

d. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

D. Commercial General Liability Insurance

i. Contractor shall maintain general liability and, if necessary, excess/umbrella insurance with a limit of liability not less than $1,000,000 per Occurrence; $2,000,000 General Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, District requires and shall be entitled to coverage for the higher limits maintained by Consultant. If such insurance contains an aggregate limit, it shall apply separately to this Contract. The insurance shall, at a minimum, cover liability arising from premises, operations, independent contractors, products and completed operations, personal injury, advertising injury and liability assumed underinsured contract, including the tort liability of another assumed in a business contract.

ii. Coverage for claims or incidents occurring, but not known, during the policy period will extend for a period of at least three (3) years past acceptance, cancellation or termination of the Work.

E. Automobile Liability Insurance

i. Contractor shall maintain automobile liability and, if necessary, excess/umbrella insurance with a limit of liability of not less than $2,000,000 for each accident. Such insurance shall cover liability arising out of any vehicle, including owned, hired, leased, borrowed and non-owned vehicles. If necessary, the policy shall be endorsed to provide contractual liability coverage.

ii. Minimum Limit: $2,000,000 combined single limit per accident. The required limit may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
iii. Insurance shall cover all owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.

iv. Insurance shall cover hired and non-owned autos. With respect to the District’s vehicles loaned or leased to Contractor for the completion of the Work, the District shall be named as loss payee. In the event of a loss, Contractor will be responsible for the cost of repairing or replacing the vehicle with vehicles of like kind and quality.

F. **Workers Compensation Insurance**

Contractor shall maintain workers compensation and employers liability insurance in accordance with the Federal and State statutes having jurisdiction over the employees where the work is performed. The limits of liability for employers’ liability coverage shall not be less than $1,000,000 each accident for bodily injury by accident and $1,000,000 each employee for bodily injury by disease.

The coverage should not contain an exclusion for claims arising out of the ownership, entrustment, maintenance, operation or use of any motor vehicles that are owned, operated or rented by or loaned to the Named Insured.

(End of Exhibit A)
Exhibit B- Sample Contract

THIS CONTRACT is made and entered into this _____ day of [month, year], 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 Services**
   Contractor shall provide BRT Sponsorship Consultant services in full accordance with Request for Proposals No. 2019-10379 prepared and issued by the District, a copy of which is attached as Exhibit X 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 District’s issuance of a written Notice to Proceed and, unless this Contract is terminated sooner pursuant to Section 7 of Exhibit C, Contractor shall provide services for BRT in the areas of sponsorship and naming rights. Services shall be performed at the District's direction and within the deadlines set forth in Exhibit A unless otherwise mutually agreed upon by the District and the Consultant.

3. **Compensation**
   The Contractor agrees to perform all of the services included in Section 1 of the Contract (Scope of Services) for a not to exceed the amount of [contract dollar amount] in accordance with Contractor's Proposal, and Best and Final Offer if any, as accepted the District. The Contractor shall include all labor, materials, taxes, profit, overhead, insurance, subcontractor/sub-consultant costs, and all other costs and expenses incurred by the Contractor.

   The Contractor shall submit invoices, at the end of each month services have been provided. Invoices shall describe in detail the services rendered by the Contractor during the previous month and shall state the number of 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
5. **Notices**
All communications relating to the day-to-day activities of the provided services shall be exchanged between the District ______________ and the Contractor ______________.

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
[NAME],
AC Transit
1600 Franklin Street
Oakland, CA 94612
Phone (510) 891-XXXX
Email:

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.

7. **Changes**
If any changes to the scope of services 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 Services described in this Contract. If such changed cause an increase in the budgeted cost of or the time required for the 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 the 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**
   
   Exhibit A

10. **Contractor’s Status**
    
    Neither the Contractor, nor any party contracting with the Contractor shall be deemed to be an 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. **Electronic Contract Monitoring**
    
    For contract monitoring and tracking purposes, the District utilizes B2GNow. This is an interactive system which requires all tiers of contractors to log in and submit payment data for prompt payment compliance and subcontractor utilization purposes. If no subcontractors are being proposed, the District may waive the requirement of utilizing this system.

12. **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 graphics 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 services 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.

13. **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.

14. **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 the 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.

15. **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 the 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.

16. **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.
17. **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 affecting 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.

18. **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.

19. **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.

20. **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.

21. **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.

22. Records
All Contractor and subcontractor’s 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 its 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 contractors 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 subcontractors 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 subcontractors 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 ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors 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 subcontractors 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 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 federal, state, 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; Amendments
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.

IN WITNESS WHEREOF, the parties have executed this Contract on the dates set forth below.

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT:

Michael Hursh
General Manager

Date

Signature

Date

Approved as to Form and Content:

________________________

Printed Name

Denise C. Standridge

Date

Title
General Counsel

Signature __________________________ Date ______________

Printed Name

Title

*If the Contractor is a corporation, this Agreement 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 Agreement 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)

(End of Exhibit B)
Exhibit C- Federal Clauses

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 the RFQ (2018-1435). 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, 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(l)) 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
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.

11. **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.

12. **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.

13. **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.

14. **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.

15. **DAVIS-BACON ACT REQUIREMENTS (NEW)**

**Minimum Wages**

A. All laborers and mechanics employed or working upon the site of any qualifying construction work under the Contract (or under the United States Housing Act of 1937 or
under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)], the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

B. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section I (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Subsection (A)(4) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which such work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

C. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

D. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

E. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination.

The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

i. The work to be performed by the classification requested is not performed by a classification in the wage determination; and

ii. The classification is utilized in the area by the construction industry;

iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the thirty (30) day period that additional time is necessary.

In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the thirty (30) day period that additional time is necessary.

The wage rate (including fringe benefits where appropriate) determined pursuant to Subsections (A)(4)(b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(End of Exhibit C)