**Sample Contract**

**THIS CONTRACT** is made and entered into this day of 201 , 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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. (hereinafter “Contractor”).

**THE PARTIES AGREE AS FOLLOWS:**

1. **SCOPE** **OF** **WORK**

Contractor shall provide design services in support of the Rapid Corridors Design – San Pablo Project, in full accordance with Exhibit A – Scope of Work.

1. **COMPONENT** **PARTS**

This Contract shall consist of the following documents:

* Contract
* Exhibit A – Scope of Work
* Exhibit B – Special Terms and Conditions
* Exhibit C – Standard Terms and Conditions
* Exhibit D – ***Federal Terms and Conditions***
* ***Exhibit E*** – Contractor’s Final Offer, inclusive of a Statement of Qualifications, and Completed Forms, as accepted by the District

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

**ALAMEDA‐CONTRA COSTA CONTRACTOR NAME:**  
**TRANSIT DISTRICT:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
**Michael Hursh Date Signature Date  
General Manager**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Printed Name**

**Approved as to Form and Content:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
**Denise C. Standridge Date Title  
General Counsel**

**Exhibit A**

**Scope of Work**

**A. General Statement**

AC Transit has received funding under the Alameda County Transportation Commission’s Capital Improvement Plan, and Federal Surface Transportation Program/Congestion Mitigation and Air Quality (STP/CMAQ) funds under the Metropolitan Transportation Commission’s (MTC) Transit Performance Initiative (TPI) program. MTC intends these funds to be used quickly to address known congestion/delay issues and improve route performance. Both funding sources will be used for Rapid Corridors projects aimed at improving transit speeds and reliability while reducing traffic congestion.

The project has been developed in partnership with MTC. The project will improve the performance of the current transportation systems by promoting the effective use of existing roadway and transit systems along San Pablo Avenue, Telegraph Avenue and Grand/W. Grand Avenue corridors. To organize delivery of the project better it has been divided into two efforts (sub-projects): 1) Rapid Corridors San Pablo & Grand/W. Grand Avenues, 2) Rapid Corridors Telegraph & Grand/W. Grand Avenues. Both design and construction phases of these sub-projects will be solicited separately. Currently, the project is in the design phase. The construction phase will follow. The design phases of these sub-projects are currently being solicited simultaneously.

The Rapid Corridors Project is intended to improve transit operations along San Pablo Avenue, Telegraph Avenue and Grand/W. Grand Avenue, as well as providing a mechanism to deliver the Southside Pilot Transit Project in Berkeley, CA. The Rapid Corridors Project will implement short-term projects recommended in the Major Corridors Study (2016).

The proposed project total is $10.3 million, with $5 million awarded by the Metropolitan Transportation Commission (MTC) Transit Performance Initiative (TPI) fund and $5.3 million provided by the Alameda County Transportation Commission’s Capital Improvement Program (CIP) funds as a match.

**B. Tasks – San Pablo Avenue & Grand/W. Grand Avenue Corridors**

This solicitation is for the design of the Rapid Corridors San Pablo & Grand/W. Grand Avenues project. A design consultant is needed to support staff in leading the design phase of the project with preliminary engineering, public outreach, environmental evaluation along with any required supporting traffic studies, preparation of project design documents, coordination of project design approval through all partnering agencies, preparing final construction documents, supporting construction management through project completion, and providing general project management support throughout the course of the project. Staff expects the design consultant to be on contract from the beginning through the end of the project.

This project will enhance corridor traffic and transit operations along San Pablo Avenue (AC Transit Lines 18, 25, 49, 52, 70, 71, 72, 72M, 72R, 74, 76, 88, 376, 800, 802, G, H, J, L, LA, LC, NL, Z) passing through 9 jurisdictions. The corridor is approximately 13.5 miles long and is the major travel corridor between Oakland and San Pablo. The Project will install transportation infrastructure improvements to decrease traffic delay and increase operational reliability for buses along the length of the corridor. Generally, improvements include evaluation of existing conditions of TSP and Signal controller/equipment along all project corridors, installation of a corridor-wide transit signal priority system through various jurisdictions along San Pablo Avenue and at some intersections along the Grand/W. Grand corridor, and programming/testing/activation of TSP equipped intersections along San Pablo, Grand/W. Grand and other i80 ICM connecting arterials. All improvements and designs shall comply with current/required jurisdictional codes.

The Rapid Corridors Project along the San Pablo Avenue Corridor will replace 15-year-old Infrared (IR) Transit Signal Priority (TSP) equipment at ~ 70 traffic signals along the corridor with more reliable, easier to maintain and monitor, modern GPS TSP technology. The San Pablo Avenue corridor extends from the intersection at Broadway and 20th Street in Downtown Oakland to the intersection of San Pablo Avenue and Rumrill Blvd. in the City of San Pablo. Most signalized intersections have been upgraded with newer 2070 signal controllers. However, there are several signals that will still need new controllers. Some signals have received dual mode phase selectors. However, most signals still need to be upgraded with the necessary dual mode phase selectors. Please note this project will require a thorough evaluation of all existing TSP and signal systems at each intersection to determine what equipment and or firmware upgrades are necessary to ensure a fully operational system.

This project will not include any bus stop or communication improvements. As most bus stops along San Pablo were relocated as part of original SMART corridors project, improvements to bus stops along the corridor will be reserved for other projects planned/currently in process along the corridor. Bus Stop and communication improvements needed along Grand/W. Grand corridor are included in another project currently in process.

An ongoing MTC project has separately evaluated and identified needed TSP improvements along W. Grand Avenue corridor between Maritime Street and Northgate Avenue. Although existing TSP equipment was found at most of the intersections, no site had fully operational TSP. Some signal upgrades were also determined necessary. The findings of the MTC project will be incorporated into the scope of this project (please see attached *Appendices A and B* for documentation referencing the report completed for MTC). This project will also investigate existing conditions and gaps in the TSP system along the Grand Avenue corridor between Northgate Avenue and Lake Park Street and include all work needed for this segment. The investigation will determine/confirm all necessary installs/upgrades needed (equipment or firmware) to be incorporated into final design plans to ensure systems are fully operational for their intended purpose. When the project is complete, the operable Grand/W. Grand Avenue TSP system will thus extend from Maritime Street to Lake Park Street. So, in review, this project will be evaluating existing conditions and proposing improvements to TSP systems at 12 intersections (east of Northgate & W. Grand) while incorporating improvements proposed at 10 others (through the MTC project) for a total of 22 intersections along the Grand/West Grand corridor (in Oakland).

This project will also evaluate ~ 26 signalized intersections along crossing arterials (plus 3 ramps) between San Pablo and Interstate 80 (various jurisdictions) to determine/confirm that all intersection TSP installs are complete and ready for full operation (originally installed as part of the i80 ICM project). These signalized intersections currently have GPS TSP systems installed but not operating. Programming, testing, and activation is still needed at these intersections as well. After evaluation, all necessary installs/upgrades (equipment or firmware) will need to be incorporated into final design plans to ensure systems are fully operational for their intended purpose.

Final programming, testing, and activation of Signal, and TSP systems will be needed along all the project corridors.

~~The design consultant will also be responsible for design and verification services relating to a W. Grand camera deployment. As a part of the ongoing MTC work on the West Grand Avenue corridor, this project will design and construct two (2) camera sites (each potentially consisting of more than one camera) at or between the Frontage Rd. and Maritime Street intersections along W. Grand Avenue. It is proposed that these would be state-owned and operated cameras connected to the Caltrans District 4 Traffic Management Center (TMC).~~

~~The primary purpose of these cameras is traffic and queue monitoring of the segment by AC Transit Operations Control Center (OCC) staff so that they may determine, based on camera feed surveillance, whether to route Transbay buses along the segment. This segment of W. Grand has variable and occasionally severe traffic congestion and queuing. Possible secondary purposes of the cameras could be collecting traffic count, traffic speed and real-time queuing data. An MTC consultant has assessed this road segment, as well as an adjacent ramp area, and provided a conceptual plan of a camera deployment for the purposes of assisting AC Transit OCC staff in transit routing. Please see the attached~~ *~~Appendix C,~~**~~Camera Deployment Plan~~*~~. Please note that it is not anticipated that Camera Location 1, on the West Grand ramp structure, would be one of the two camera sites envisioned.~~

~~The consultant would produce the final design, specification, environmental and permitting documents required for the purposes of constructing these camera sites (as well as all other elements within the scope of this design). The consultant should also make recommendations as regards to the calibration, integration and operations of the camera systems, particularly how they will connect with any associated Caltrans system while allowing for the video feed to be shared with AC Transit. The proposed camera operation and design should meet the needs of AC Transit and Caltrans; it should also reflect any Caltrans restrictions on control of surveillance feeds, hardware form factor and weight.~~

In summary this project seeks to install a GPS TSP system at ~ 80 signalized intersections along project corridors as well as programming, testing, and activation at a potential total of ~ 120 signalized intersections ~~and install cameras at 2 locations along W. Grand~~. The following presents a description of major tasks and subtasks to complete preliminary through final PS&E as well as construction engineering for the Project:

Task 1 – Project Management

Task 2 – Preliminary Engineering

Task 3 – Public Outreach

Task 4 – Preparation of 35% & 65% PS&E Documents

Task 5 – Preparation of Final 100% Bid-Ready PS&E Documents

Task 6 – Signal coordination/signal timing preparation and implementation

Task 7 – System Integration Support

Task 8 – Bid & Construction Support

In general, the required scope of work shall include any and all implicit and explicit required tasks (not limited to these listed) inherently necessary to complete the overall project’s intended purpose (i.e. It is expected that the consultant will need to facilitate numerous meetings and presentations with the public and/or various project stakeholders under each of the listed tasks, be responsible for preparation as well as implementation (signal controller programming) of signal coordination/timing changes, etc. .

The project must meet an aggressive implementation schedule sought by MTC. All improvements are to be constructed and installed by February 2020. To ensure the design phase of the project does not delay start of construction, the selected firm shall have enough experienced technical staff available/capable of producing final PS&E documents for all proposed improvements spanning the project limits along the corridor within 5 months of NTP. MTC has indicated the need to complete the project construction phase by ~~January 31, 2019~~ ***February 28, 2020***. This requires the design phase to be completed with all construction documents ready for solicitation no later than ~~July 31, 2019~~ ***August 31, 2019***.

**Task 1: Project Management**

The consultant shall apply project management tools and techniques to produce consistent and quality-oriented project deliverables within the allocated budget and schedule. The consultant shall be in regular communication with the District’s Project Manager to provide project status updates on a weekly basis through the construction phase. The consultant is expected to coordinate with the District and all project partners, including Metropolitan transportation Commission, the cities of Oakland, Berkeley, Emeryville, Albany, El Cerrito, Richmond, San Pablo, the County and California Department of Transportation District 4 to provide a functional and effective design that meets the standards of both the District and project partners.

The consultant shall also provide typical on-going project management activities, including (not limited to) preparation of meeting agendas, meeting facilitation, meeting minutes, weekly/bi-weekly coordination meetings, periodic project schedule updates, and monthly invoices. Working with District staff, the consultant shall regularly monitor, track, and report the status of the project budget, work effort progress, and schedule. Reports shall be straightforward, easy to read and understand, logically organized and structured to provide the relevant/important information and include early identification of challenging issues and their effective resolution.

***Please note: The consultant will be required to separately track work efforts associated with West Grand scope elements within each task and reflect these efforts on separate line items on invoices due to funding source requirements.***

**Task 2: Preliminary Engineering**

Task 2.1 - Survey & Base Mapping

The consultant shall perform a thorough evaluation of all signalized intersection systems slated to receive TSP upgrades or which have already been upgraded with TSP, and are included in the project, to determine what work is still needed to activate a fully functional TSP system along all project corridors. The consultant will then prepare a brief report summarizing the findings.

The consultant shall prepare appropriate base mapping for design and conduct all associated surveying/research necessary. Base mapping shall consist of digital plans of field surveyed information, including (but not limited to) all existing roadway features, traffic signal equipment, right-of-way, survey control, property lines/ownership information as well as compiling of all necessary information for utility facilities while evaluating for potential conflicts. Each site investigation shall also include reviewing any/all as-built documents. It is expected that the consultant will establish and confirm the basis of design in this task.

Task 2.2 - Environmental Evaluation

It would be best for the project to be considered as a whole (vs. several separate city projects) for both the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA) processes. At a minimum, checklists and basic environmental analyses will be required. The consultant is tasked with determining local, state, and federal requirements, and preparing the necessary evaluation and documentation to ensure that the documentation is performed correctly and expeditiously. This includes performing any supporting studies (including traffic or parking studies) that maybe required in the process.

The Environmental Evaluation, conducted by the design consultant, shall be complete. The consultant shall submit the Environmental Checklist document clearly identifying all environmental impacts from the project to all necessary agencies as required, and then recorded as appropriate. Due to the nature of the improvements it is anticipated that this project will be identified as categorically exempt under CEQA (or categorically excluded under NEPA) requirements.

***Please note: The consultant will be required to separately track work efforts associated with West Grand scope elements within each task and reflect these efforts on separate line items on invoices due to funding source requirements.***

**Task 3: Public Outreach**

AC Transit is not anticipating community meetings for this project as the project is focused on signal technology. However, if needed, Public meetings will be organized and facilitated by the consultant with support from District staff. The consultant will be responsible for reservations, mailings, and presentation materials. Other smaller business/neighborhood organization meetings will also be facilitated by the consultant. It is anticipated that the consultant will develop some of the necessary presentation materials from existing design documents during preparation of the 35% design submittals.

The consultant will be responsible for developing a public outreach plan to ensure awareness and gain local input throughout design and construction phase of the process. The consultant will analyze demographic information in the project corridors capturing data, such as race and ethnicity, income, and language to develop the outreach plan. The consultant will meet with all stakeholder agencies, as determined in consultation with AC Transit staff, to develop a specific outreach plan, given the type of proposed project. At minimum, all outreach deliverables must be provided in English, Spanish and Chinese.

The consultant will develop materials for Transportation Commission, City Council and AC Transit’s Board meetings and provide necessary support for District staff. The consultant will be responsible for mailings, handouts, and presentation materials. The handouts will include, but not limited to a fact sheet, proposed project map, and Frequently Asked Questions. Additionally, the consultant will be responsible for sending specific notifications to property owners, business owners and residents in the vicinity of the proposed bus stop improvements.

The consultant is also responsible for providing content for the AC Transit project’s website and preparing content and images for eNews (multiple languages) and social media posts (English only).

***Please note: The consultant will be required to separately track work efforts associated with West Grand scope elements within each task and reflect these efforts on separate line items on invoices due to funding source requirements.***

**Task 4: Preparation of 35% and 65% PS&E Documents**

The design consultant shall escort and oversee the project through the design phase, working with each agency and the District for timely submission of complete design documents. The consultant will be responsible for corresponding reviews through each design stage of the and quality control in this task. Acting as adjunct staff, under the direction of the District’s project lead, they will be responsible for providing the necessary support and direction to complete the design successfully and on time. This will include any correspondence needed with the appropriate/necessary departments of each agency to ensure a timely comprehensive review of the design at each stage.

Task 4.1 - 35% PS&E

Based on the site investigations and the establishments of design, the consultant shall proceed to develop 35% PS&E design documents to depict key aspects of design. The consultant shall coordinate with the District and the project partners to ensure all necessary aspects of the design are included. Preliminary project contracting requirements, general conditions and technical specifications will also be prepared and submitted. A construction schedule representing a 35% level estimate for all remaining portions of the design and project shall be prepared and included. All designs shall comply with current/required jurisdictional codes. Preliminary construction cost estimates will be prepared and included as part of this design package.

Task 4.2 - 65% PS&E

Building on the 35% Engineering Design, the PS&E documents will be further developed significantly with additional design content/details and requirements to reflect a 65% design level of completion. After the District and project partners comment on the 35% Design submittal, the consultant shall respond and resolve any outstanding issues for the 65% design phase. Comments on the 35% design will then be incorporated into the 65% design plans. The design consultant will further develop the Technical Specifications with additional details and requirements to reflect a 65% design level of completion. At this state a construction schedule representing a 65% level estimate for all remaining portions of the design and project shall be prepared and included. The consultant will develop 65% level estimates of probable construction costs for the project. At this time the consultant will also provide reasonable construction alternatives/project phases to meet funding constraints, as necessary.

***Please note: The consultant will be required to separately track work efforts associated with West Grand scope elements within each task and reflect these efforts on separate line items on invoices due to funding source requirements.***

**Task 5: Preparation of Final 100% Bid-Ready PS&E Documents**

This task will entail preparation of the 100% bid-ready design plans, specifications, and estimates (Final PS&E). Building on the detailed designs prepared during the 65% design phase, the final plans, specifications, and estimates will be further developed with all design details and requirements necessary to finalize the design documents ready for construction. Once the consultant has responded and resolved any issues for the final design phase, comments on the 65% Design Plans will be incorporated. The 65% design plans will then be further developed with additional design details and requirements to complete a Final 100% Bid-Ready PS&E package ready for construction. Comments on the 65% specifications will also be incorporated. Then building on the 65% Design Technical Specifications, the consultant will further develop the Technical Specifications with additional details and requirements to reflect a Final design level of completion. At this stage, another construction schedule representing a 100% level completion of the design shall be prepared for the project. Final Engineer’s Estimate of Probable Construction Costs will be completed for the entire project, including final alternatives, and/or phases needed to meet funding constraints, as necessary. Consultant will allow agencies to confirm all 65% review comments have been resolved and incorporated into final 100% plans before deeming final plan set Bid-Ready.

***Please note: The consultant will be required to separately track work efforts associated with West Grand scope elements within each task and reflect these efforts on separate line items on invoices due to funding source requirements.***

**Task 6: Signal Coordination/Signal Timing Preparation and Implementation**

The W. Grand portion (from Maritime Street to Northgate Avenue) of the Grand/W. Grand corridor has been evaluated on the basis of field review and various counts taken between 2016-2018 and will be re-timed/coordinated with new signal timings incorporated and fine-tuned by an outside MTC consultant. These tentative signal timing recommendations are included in the implementation report prepared for MTC.

It is expected that the I-80 Integrated Corridor Mobility (ICM) project, along San Pablo, will have the corridor already re-timed/coordinated for TSP. However, the consultant will be responsible to ensure the entire corridor’s coordination is in optimum working order. To ensure the entire corridor is optimized the consultant should be prepared to perform the following:

A traffic study to confirm signal operational strategies for the project corridors, supplementing and incorporating the work performed on W. Grand by the MTC consultant, shall be conducted by the design consultant. Based on traffic and operations analyses using Synchro the design consultant will propose modifications for review. Any ADT/TM counts needed to perform the analysis should be taken as soon as possible to avoid any delays. Any existing data available should be utilized wherever possible and approved by local agencies. Both bus and automobile queues/merges, LOS, and travel times should be evaluated in the analysis. Model coding for project corridors should include sufficient detail to provide adequate data results, such as TSP parameters (or an approved emulation method), lane configurations, bike facilities, driveway locations, pedestrian crossings, on-street parking, signalized/non-signalized left turns and queues, and existing speed limits, etc.

Based on the results of this study and comments to proposed signal coordination and timing modifications, the consultant will prepare revised base Time of Day (TOD) signal timing sheets for the corridors, except for the W. Grand corridor. The consultant will coordinate with the MTC consultant on the proposed retiming of the W. Grand portion of the corridor. These new proposed signal timing should:

* Incorporate a Transit Signal Priority (TSP) system along the entire corridor for all corridors.
* Revise/improve signal coordination plans along the project corridors incorporating TSP and time savings from signal upgrades to create a more efficient/effective and responsive coordination system.

The proposed signal timing plans will be submitted for final review by appropriate agencies for comment. Upon receipt of comments and final approval by each agency (expect at least 2 iterations), the consultant is responsible for the implementation of new signal timing plans and final fine-tuning of the signal coordination, in concert with the MTC consultant’s implementation/timing on the W. Grand portion of the corridor.

***Please note: The consultant will be required to separately track work efforts associated with West Grand scope elements within each task and reflect these efforts on separate line items on invoices due to funding source requirements.***

**Task 7: System Integration**

System Integration support will need to be provided to ensure completion of all tasks and ensure full operation of the project system as intended. This project will include coordination with multiple agencies and their individual systems. Any final (“last mile”) connections, ensuring compatibility & connectivity, needed between these systems will be the responsibility of the consultant to coordinate and provide all necessary designs and specifications to ensure full operation of the project system as intended.

***Please note: The consultant will be required to separately track work efforts associated with West Grand scope elements within each task and reflect these efforts on separate line items on invoices due to funding source requirements.***

**Task 8: Bid/Construction Support**

The consultant shall provide bid support services. This task shall include a pre-bid meeting and responses to subsequent bidder questions and any addendums needed to the Final Design PS&E. The consultant shall provide construction support throughout the duration of construction. This will include all necessary responses to RFI’s, reviewing submittals, reviewing change order requests, and attendance to all weekly construction meetings.

***Please note: The consultant will be required to separately track work efforts associated with West Grand scope elements within each task and reflect these efforts on separate line items on invoices due to funding source requirements.***

**Exhibit B**

**Special Terms and Conditions**

1. **Term of Contract**

The term of this contract shall be for a period of no longer than 12 months, and shall be begin in March 2019 and completed by February 2020.

1. **Method of Compensation**

The Contractor agrees to perform all of the services included in Exhibit A, Scope of Work for a total contract ceiling that shall not exceed $ \_\_\_\_\_\_\_\_\_\_\_\_\_, in accordance with the Contractor’s Offer/Best and Final Offer, if any, as accepted by the District. The total not-to-exceed price shall include all labor, materials, taxes, profit, overhead, insurance, subcontractor/subconsultant costs, and all other costs and expenses incurred by the Contractor.

The Contractor shall submit invoices, based on the milestone payment schedule amounts upon the delivery and District acceptance of deliverables, or at the end of each month if a subcontractor/subconsultant submits an undisputed invoice for payment, and shall state the number of hours and the applicable hourly rate of each person. Hourly rates shall be in accordance with the Contractor’s Offer and BAFO if any, as accepted by the District. The District will endeavor to pay properly submitted, undisputed invoices within 30 calendar days of initial receipt.

1. **Contract Order of Precedence**

Upon award, the following shall comprise the contract document. In the event of a conflict in the provisions of the Contract, as accepted by the District and as they may be amended, the following shall prevail in the order set forth below:

1. ***Exhibit D, Federal terms and conditions***
2. Exhibit B, Special terms and conditions
3. Exhibit C, Standard terms and conditions
4. Exhibit A, Scope of Work
5. Exhibit D, inclusive of Final Offer, SOQ and Completed Forms, as accepted the District
6. **Notices**
7. Any notice, 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 CONTRACTOR

Jeanet A. Moore Contact Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contracts Manager Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AC Transit Contractor Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1600 Franklin Street Address\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Oakland, CA 94612 Address\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone (510) 891-5421 Phone #:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: JAMoore@actransit.org Email:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. 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.
2. **Small/Micro Business Enterprise (SBE/MBE) Goal**
3. The District seeks to utilize Small Business Enterprises (SBE), including Disadvantaged Business Enterprises (DBE) and Micro Business Enterprises (MBE) to the extent permissible by law, when such businesses are available and the price of their goods, material or services sought is reasonable and competitive in the marketplace.
4. The specific goal for this project is 30% SBE participation. Evidence of goal attainment can be demonstrated with the submitted offers from certified SBEs, including DBEs self-performing the prime award minimum threshold of 33%, or non SBEs/DBEs subcontracting a minimum of 30% of project work to a certified SBE/DBE.
   * 1. The contractor must promptly notify the District whenever and prior to terminating, replacing, or reducing scope of a DBE subcontractor performing work related to this contract; obtain written authorization from the District’s Contracts Compliance Department to terminate, replace, or reduce scope of a DBE firm, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work if granted authorization. The contractor may not terminate, replace, or reduce scope of a DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written authorization from the District.
5. **Insurance Requirements**
6. 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.
7. 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 effective during the terms of this Contract.
8. All Insurance Coverages

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

1. 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.
2. Certificate(s) of insurance is to be mailed to the following address or such other addresses as designated by the District:
3. Jeanet A. Moore

Contracts Specialist

AC Transit

1600 Franklin Street, 6th Floor

Oakland, CA 94612

Email: [jamoore@actransit.org](mailto:jamoore@actransit.org)

1. 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 Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.
2. Failure to maintain the required insurance may result in the termination of this Contract at the District’s option.
3. 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.
4. Contractor shall provide certified copies of all insurance policies required in this Section within ten (10) days of the District’s written request of said copies.
5. 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.
6. 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.
7. Each insurance policy shall be written on a primary coverage basis, including any self-insured retentions, unless expressly approved by the District, in writing.
8. Each insurance policy, with the exception of the workers’ compensation policies, shall include by specific endorsement the following as additional insureds:
   1. “The District, it’s Directors, agents, officers, and employees.”
9. In addition, any person or entity shall be added as an additional insured upon the request of the District to the Contractor.
10. 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.
11. 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.
12. 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.
13. 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.
14. Claims-Made Insurance

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

1. Policy retroactive date coincides with or precedes the Contractor’s start of work (including subsequent policies purchased as renewals or replacements).
2. 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.
3. 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 Agreement or Permit.
4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.
5. Commercial General Liability Insurance
6. Contractor shall maintain general liability and, if necessary, excess/umbrella insurance with a limit of liability not less than $1,000,000 each occurrence. 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 under insured contract, including the tort liability of another assumed in a business contract. There shall be no endorsement or modification limiting the scope of coverage for liability arising from pollution or employment-related practices.
7. 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.
8. Automobile Liability Insurance
9. Contractor shall maintain automobile liability and, if necessary, excess/umbrella insurance with a limit of liability of not less than $2,000,000 each accident.  Contractor shall also maintain uninsured and underinsured motorist coverage with limits of liability of not less than $2,000,000 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.
10. With respect 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.
11. Professional Errors and/or Omissions

Contractor shall maintain professional insurance appropriate to Contractor’s profession with a limit of not less than $1,000,000 per occurrence

1. 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.

Additionally, the coverage shall include:

1. The District, its officers, officials, Board of Directors and employees are to be covered as additional insureds as respects to liability arising out of activities performed on behalf of Contractor, products and completed operations of Contractor, premises owned, occupied or used by Contractor, and automobiles owned, leased, hired or borrowed by Contractor. Coverage shall contain no special limitation on scope of protection afforded to the District, its officers, Board of Directors, officials or employees.
2. A waiver of subrogation for the District,
3. An endorsement indicating the coverage is primary and non-contributing and any coverage maintained the District is excess over the Contractor’s insurance coverage, and
4. An endorsement scheduling this Contract with the District as an Insured Contract on the policy, including removal of insured vs. insured exclusionary language that may be applicable to this Contract.

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.

1. **Prompt Payment**

The District shall pay properly submitted, undisputed invoices within 30 calendar days of initial receipt. Within seven (7) calendar days of receipt of payment from the District, the prime Contractor shall pay any subcontractors that have submitted undisputed invoices and report such activity in the District’s contract monitoring tool cited below.

1. **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 login 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.

1. **Rights in Data**

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

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

1. **Release of Information**

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

1. **Indemnification**
2. 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 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.
3. 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.
4. 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.
5. **Notice of Labor Disputes**
6. If the Contractor or a Service Delivery Provider has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor immediately should give notice, including all relevant information, to the District’s Project Manager and the District’s Contracts Specialist.
7. 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.
8. **Removal of Contractor’s Personnel**
9. The Contractor and any Service Delivery Provider acknowledge 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 and any Service Delivery Provider agree to be responsible for the behavior of that person during contract performance.
10. The Contractor and any Service Delivery Provider acknowledge that the District has the right to require the removal of any Contractor and any Service Delivery Provider employee that the District determines at its sole discretion to be negatively effecting performance of work under the contract. Examples of such behavior include: (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; 5) Conduct in violation of District policy or local, state or federal laws.
11. Upon receipt of written notice from the District that a person's behavior is unacceptable or unduly impairing contract performance, the Contractor and any Service Delivery Provider agree 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 and any Service Delivery Provider agree that it is not entitled to any additional costs it may incur as a result of the removal of the person from the District.
12. **Communications with** **Contractor’s Staff**

In order to ensure efficient communication of operational needs, the District staff shall be permitted to communicate directly with Contractor’s staff regarding day to day issues for the purpose of inquiry as to factual performance issues. The District will not give Contractor’s staff directions concerning performance under this Contract. Issues which affect the Contract will be communicated through the General Manager.

1. **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.

1. **Reporting**

Contractor shall provide weekly Project Status Reports to the District’s Project Manager or his/her designee, as requested.

1. **Claims process (Public Contract Code § 9204)**

A claim is a separate demand by the Contractor for one or more of the following: (i) a time extension for relief from damages or penalties for delay, (ii) payment of money or damages arising from work done pursuant to the contract for a public work, or (iii) payment of an amount disputed by the District. A claim must be sent by registered or certified mail, and upon receipt of a claim sent by registered or certified mail, the District will review it and, within 45 days, provide a written statement identifying the disputed and undisputed portions of the claim. The 45-day period may be extended by mutual agreement or, until after the next Board of Directors meeting, if the Board must approve the disputed and undisputed portions of the claim. Any payment due on the undisputed portion of the claim must be processed within 60 days.

If the claimant disputes the District’s written response or if the District fails to respond to a claim within the time prescribed, the claimant must demand a meet and confer for settlement of the issues in dispute. The District must then schedule a meet and confer conference within 30 days for settlement of the dispute. Any disputed portion of the claim that remains in dispute after the meet and confer conference will be subject to nonbinding mediation, as specified. The District can also require arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if the mediation does not resolve the dispute.

If the District fails to respond to a claim from a contractor within the above referenced time periods, the claim is deemed rejected in its entirety. Unpaid claim amounts which are not paid in a timely manner shall accrue interest at 7% per annum.

To read the full AB 626 language, please refer to: <http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0601-0650/ab_626_cfa_20160627_172317_sen_comm.html>

1. **Governing Law**

All matters arising under the contract shall be governed by California law.

1. **Venue**

In the event of a dispute or breach of contract, venue shall be in Alameda County, California.

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***Exhibit D***

***Federal Terms and Conditions***

1. ***Incorporation of Federal Transit Administration (FTA) Terms***

***This Contract is being financed in part by the Federal Transit Administration (FTA). Accordingly, federal requirements apply to this Contract. In the event that those requirements are revised during the performance of this Contract, the Contractor shall incorporate those revised provisions mandated by the FTA. The following provisions are Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated March 18, 2013, as revised, and as may be revised, 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 document. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any District requests that would cause the District to be in violation of the FTA terms and conditions. To the extent the Contract provisions required by the FTA, and State law are inconsistent, the Contractor is responsible for complying with the more comprehensive or stricter requirements.***

1. ***No Federal Government Obligation to Third Parties (by Use of a Disclaimer)***

***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 contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the 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.***

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

***The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.***

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

1. ***Access to Records***

***Contractor agrees to provide the District, the FTA Administrator or its authorized representatives, including any PMO Consultant, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of final payment under this Contract and all other pending matters are closed, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the 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. Reference 2 CFR 200.333.***

1. ***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 Contract (Form FTA MA (2) dated October 1995) 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 comply shall constitute a material breach of this contract. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.***

1. ***Civil Rights Requirements***
2. ***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 law implementing regulations and other implementing requirements FTA may issue.***
3. ***Equal Employment Opportunity: In accordance with Title VII of the Civil Rights Act; as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 113 75, "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.***

***During the performance of this contract, the Contractor agrees as follows:***

1. ***The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.***
2. ***The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.***
3. ***The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor’s commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.***
4. ***The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.***
5. ***The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.***
6. ***In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.***
7. ***The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempt by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event an Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.***
8. ***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.***
9. ***Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.***
10. ***Access Requirements for Individuals with Disabilities: The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. Contractor also agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101, et seq., and 49 U.S.C. § 322; § 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; § 16 of the Federal Transit Act, as amended; 49 U.S.C. App. § 612; and the following federal regulations, including any amendments thereto:***
11. ***U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;***
12. ***U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;***
13. ***Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;***
14. ***U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;***
15. ***U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;***
16. ***U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;***
17. ***U.S. Equal Employment Opportunity Commission, "Regulations in Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;***
18. ***U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;***
19. ***FTA regulations, "Transportation for Elderly and Handicapped Persons", 49 C.F.R. Part 609; and***
20. ***Any other implementing federal regulations and requirements.***
21. ***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.***
22. ***Termination / Resolution of Disputes***
23. ***Termination for Convenience of the District: The District, by written notice, may terminate this contract, in whole or in part, whenever the District determines that such termination is in its best interests. Any termination under this provision shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. After receipt of said notice, Contractor shall stop work on this contract on the date and to the extent specified in said notice, terminate all applicable orders and subcontracts, and complete all work not terminated by said notice. After receipt of said notice, Contractor shall submit to the District its termination claim setting forth Contractor's actual, direct, and unavoidable costs incurred which cannot be canceled as a result of said termination together with such information as may be required by the District to evaluate the claim. The determination of the District on the claim shall be final subject only to an appeal pursuant to the dispute resolution procedures set forth herein.***
24. ***Termination for Default: In the event that the Contractor breaches the terms or violates the conditions of the contract and does not within ten (10) calendar days after receipt from the District of a notice of default ( or, in the case of a default that cannot be remedied within ten (10) calendar days, to commence to cure said default within said ten (10) calendar days and thereafter to diligently pursue said cure until the default is remedied), the District may in its discretion terminate the contract, or such portion thereof, as the District determines to be most directly affected by the default.***

***The term "default" for purposes of this provision includes, but is not limited to, the performance of work in violation of the terms of this contract; abandonment, assignment, delegation or subletting of this contract without approval of the District; bankruptcy or appointment of a receiver for Contractor's property; failure to perform services or other required acts within the time specified for the contract or any extension thereof; refusal or failure to provide proper workmanship; failure to take effective steps to end a prolonged labor dispute; and the performance of the contract in bad faith. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the convenience of the District.***

1. ***Termination for Force Majeure: The performance of work under this contract may be terminated by the District, in its discretion, upon application therefore by the Contractor and based upon unforeseen causes beyond the control and without the fault or negligence of the Contractor such as Acts of God which render impossible the Contractor's performance under the contract. An "Act of God" shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the Contractor to foresee or make preparation in defense against.***
2. ***Disputes***
3. ***Performance During Dispute: Unless otherwise directed by the District, Contractor shall continue performance under the Contract while matters in dispute are being resolved. Further, the District shall pay Contractor for any undisputed work performed by Contractor prior to or during the resolution of the matters in dispute.***
4. ***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.***
5. ***Mandatory and Binding 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, cannot be settled or resolved amicably by the parties during the thirty (30) day period of good faith negotiations provided for above, the either party or any party hereto may submit said controversy, claim or dispute for binding arbitration before a single neutral arbitrator in accordance with the provisions contained herein and in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Rules"); provided, however, that notwithstanding any provisions of such Rules, the parties to the arbitration shall have the right to take depositions and obtain discovery regarding the subject matter of the arbitration, as provided in Title III of Part 4 (commencing with Section 1985) of the California Code of Civil Procedure, as and to the extent that the arbitrator deems fair and reasonable. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator shall determine all questions of fact and law relating to any controversy, claim or dispute hereunder, including but not limited to whether or not any such controversy, claim or dispute is subject to the arbitration provisions contained herein.***

***Any party desiring arbitration shall serve on the other party or parties and the San Francisco Office of the American Arbitration Association, in accordance with the aforesaid Rules, its Notice of Intent to Arbitrate ("Notice"). The parties shall select a single, neutral arbitrator who is generally familiar with the factual and legal issues that relate to this Contract and the dispute to be resolved by arbitration. In the event that the parties are unable to agree on a neutral arbitrator, then one shall be selected in accordance with the Rules. The arbitration proceedings provided hereunder are hereby declared to be self-executing and it shall not be necessary to petition a court to compel arbitration.***

***The parties to the arbitration shall share equally all costs of the arbitration, including the fee of the neutral arbitrator, and each party shall bear its own costs. The arbitrator shall have the authority, in accordance with the provisions of this Contract, to award to the prevailing party its costs, including its share of the arbitration costs, and reasonable attorneys' and expert witness fees and expenses.***

***If a controversy, claim or dispute arises between the parties which is subject to the arbitration provisions hereunder, and there exists or later arises a controversy, claim or dispute between the parties, or either of them, and any third party, which controversy, claim or dispute arises out of or relates to the same transaction or series of transactions, said third party controversy, claim or dispute shall be consolidated with the arbitration proceedings hereunder; provided, however, that any such third party shall be a party to an agreement with either of the parties which provides for the arbitration of disputes thereunder in accordance with rules and procedures substantially the same in all material respects as provided for herein or, if not, shall consent to arbitration as provided for hereunder.***

***All arbitration proceedings shall be held in Oakland, California.***

***The Notice of the demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.***

1. ***Waiver of Remedies for any Breach: In the event that the District elects to waive its remedies for any breach by the Contractor of any covenant, term, or condition of this Contract, such waiver by the District shall not limit the district's remedies for any succeeding breach of that or any other term, covenant, or condition of this Contract.***
2. ***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 Agreement.***

1. ***Disadvantaged Business Enterprise (DBE)***

***This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%.***

***The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the District deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).***

***The Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.***

***The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than seven (7) days after the contractor's receipt of payment for that work from the District.***

***The Contractor must promptly notify the District whenever and prior to terminating a DBE subcontractor performing work related to this contract; obtain written authorization from the District’s Contracts Compliance Department to terminate a DBE firm,, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work if granted authorization to terminate a DBE firm. 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.***

***Pursuant to 49 CFR §26.27, the District strongly encourages Contractor s and Subcontractors to utilize the services offered by DBE financial institutions A list of DBE financial institutions can be found online at*** [***http.//www.fms treas.gov/mbdp/current list.html***](file://gofs03/eelkington$/RFP%20Template/http./www.fms%20treas.gov/mbdp/current%20list.html)  ***or provided by the District’s Contracts Compliance Administrator, Phillip McCants via email request to*** [***pmccants@actransit.org***](mailto:pmccants@actransit.org)***.***

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

1. ***Privacy Act***

***The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:***

1. ***The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.***
2. ***The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.***
3. ***Contract Work Hours and Safety Standards Act***
4. ***Overtime: Neither the Contractor nor its Subcontractors may permit any laborer or mechanic in any workweek in which he or she is employed on such work under this Contract to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.***
5. ***Violation/Liability for Unpaid Wages/Liquidated Damages: In the event of any violation of the clause set forth in paragraph (A) of this Section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages.  In addition, Contractor and Subcontractor shall be liable to the United States for liquidated damages.  Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this Section, in the sum of $20 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this Section.***
6. ***Withholding for Unpaid Wages and Liquidated Damages: The District shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor under any such contract or any other Federal contract with Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this Section.***
7. ***Subcontracts: The Contractor shall insert in any subcontract the clauses set forth in this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts.  The Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in this Section.***
8. ***Payrolls and Basic Records: Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers 1937, or under the Housing Act of 1949, in the construction or development of the project).  Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of  contributions  or  costs  anticipated  for  bona  fide  fringe,  benefits  or  cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis- Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits, the Contractor employ apprentices or trainees under approved programs, it shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.***
9. ***Suspension and Debarment***

***The prospective lower tier participant certifies, by submission of their bid or submittal, that neither it nor its "principals" [as defined at 2 C.F.R. § 180.995] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this submittal.***

1. ***Lobbying***

***Contractors are required to comply, and assure the compliance of each third party Contractor at any tier and each sub-recipient at any tier, with U.S. Department of Transportation regulations, "New Restrictions on Lobbying,: 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352. Contractor shall certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.***

***Contractor shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded to the District. Contractor shall ensure that all of its Subcontractors under this Contract shall certify the same.***

***Contractor must complete and execute the form entitled "Certification Regarding Lobbying" which is to be completed and submitted with final Offer. The District is responsible for keeping the certification of the Contractor, who is in turn responsible for keeping the certification forms of subcontractors.***

1. ***Clean Water and Air 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., and the Clear 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 the FTA and the appropriate EPA regional office. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in part or in whole with federal assistance provided by the FTA.***

1. ***Prompt Payment of Subcontractors***

***A.  In  accordance with  the  California revised statutes, section 34-221(g), the  agency's solicitation and/or contract documents, the successful submitter is required to promptly pay its subcontractors, subconsultants, or suppliers within seven (7) calendar days of receipt of each progress payment from the agency.  No contract terms and conditions between the successful submitter and its subcontractors, subconsultants, or suppliers may alter the rights of any subcontractor, subconsultant, or supplier to receive prompt and timely payment as provided herein.***

***B.  Any reduction of retention by the Agency to the Successful Submitter shall result in a corresponding reduction to subcontractors or suppliers who have performed satisfactory work.  The prompt payment provisions of 49 CFR Part 26 also require the Successful Submitter to ensure the prompt and full payment of retainage monies to subcontractors or subconsultants  at  such  time  as  the  work  of  the  subcontractor  or  subconsultant  is complete and the Agency has accepted the work and paid the Successful Submitter for the work performed and accepted.  Retention shall be paid no later than 30 days after such payment is issued by the Agency.***

***C.  Any diversion by the Successful Submitter of payments received for work performed on the contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for a declaration of breach of the contract with the Submitter.  If the Successful Submitter fails to make payments in accordance with these provisions, the Agency may take any one or more of the following actions, and the Successful Submitter agrees that the Agency may take such actions:***

***1.  Hold the Successful Submitter in default under this contract.***

***2.  Withhold future payments, including retention, until proper payment has been made to subcontractors or suppliers in accordance with these provisions.***

***[END OF FEDERAL CLAUSES]***

**1. RENDITION OF SERVICES**

The Contractor hereby agrees to undertake, carry out and complete all work established herein in a professional and efficient manner satisfactory to District standards. The professional service or the performance of work or services required by the District cannot satisfactorily be performed by the regular employees of the District.

**2. 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 person performing services for the Contractor shall be one solely between said parties.

Contractor shall not subcontract any services to be performed by it under this Agreement without the prior written approval of the District, except for service firms engaged in drawing, production, typing and printing. Contractor shall be solely responsible for reimbursing any subcontractors and the District shall have no obligation to them.

**3. OWNERSHIP OF WORK**

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. In the event that the work, which is the subject of this Agreement, is not completed, for any reason whatsoever, all materials generated under this Agreement shall be delivered as the District may direct.

**4. RECORDS**

The Contractor shall permit the authorized representatives of the District to inspect and audit all data and records relating to performance under this Agreement. Contractor shall maintain all such records for a period of three (3) years after the District makes final payment under this Agreement.

**5. TERMINATION FOR DEFAULT**

In the event the Contractor breaches the terms or violates the conditions of this Agreement, and does not within ten (10) days of written notice from the District cure such breach or violation, the District may immediately terminate this agreement, and shall pay the Contractor only its allowable costs to the date of termination.

**6. TERMINATION FOR CONVENIENCE**

The District may terminate this Agreement, in whole or in part, at any time for the District's convenience and without cause at any time by giving the Contractor written notice of termination. The Contractor will be paid for those services performed pursuant to this Agreement to the satisfaction of the District up to the date of notice of termination. The Contractor shall promptly submit its termination claim. If the Contractor has any property in its possession belonging to the District, the Contractor will account for the same and dispose of it in the manner the District directs.

**7. NON-DISCRIMINATION**

In connection with the execution of any Contract hereunder, the Contractor shall not discriminate against any applicant or employee on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, gender, gender identity, gender expression, sexual orientation, sex or age as defined in Section 12926 Government Code.

**8. INDEMNIFICATION**

The Contractor shall defend, indemnify, keep and save harmless the District, its Board of Directors, officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, expense, costs (including, without limitation, costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the District.

**9. CHANGES**

If any changes to the scope of services are sought by either party that would require a modification of the amount of compensation, the changes must be reviewed and approved in advance of any action to implement the change by the Project Manager and the Purchasing Department.

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

In the event the Contractor encounters any unanticipated conditions or contingencies that may affect the scope of services and would result in an adjustment to the amount of compensation specified herein, 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 compensation resulting therefrom.

Any notices shall be given to the District under the NOTICES clause of the Special Terms & Conditions. Any and all agreed upon pertinent changes shall be expressed as a written modification to this Agreement prior to implementation of such changes.

**10. DISPUTE RESOLUTION**

In case any disagreement, difference or controversy shall arise between the parties, with respect to any matter in relation to or arising out of or under this Agreement or the respective rights and liabilities of the parties, and the parties to the controversy cannot mutually agree thereon, then such disagreement, difference, or controversy shall be determined by binding arbitration, according to the rules of the American Arbitration Association.

Any award made by the Arbitrator(s) shall be final, binding and conclusive upon all parties and those claiming under them. The costs and expenses of any Arbitration shall be borne and paid as the Arbitrator(s) shall, by their award, direct.

The submission to Arbitration is hereby made a condition precedent to the institution of any action at law or in equity with respect to the controversy involved; and such action at law or in equity shall be restricted solely to the subject matter of the challenge of such award on the grounds and only in the manner permitted by law.

**11. NO ASSIGNMENT**

This Agreement is personal to each of the parties hereto, and neither party may assign or delegate any of its rights or obligations hereunder without first obtaining the written consent of the other.

**12. PROHIBITED INTERESTS**

No Director, officer, or employee of the District during his/her tenure or for one year thereafter, shall have any interest direct or indirect, in this Agreement or the proceeds thereof.

Contractor covenants that it presently has no interest, direct or indirect, which would conflict in any manner or degree with the performance of the services called for under this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor. The District may require Contractor to file an annual Statement of Economic Interest form pursuant to the Political Reform Act of 1974 (Government Code Section 81000 et seq.)

**13. WAIVER**

Failure of any party to exercise any right or option arising out of a breach of this Agreement 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.

**14. GOVERNING LAW**

This Agreement, its interpretation and all work performed thereunder, shall be governed by the laws of the State of California.

**15. INSURANCE**

Depending on the nature of the services being solicited, the District may have certain minimum insurance requirements.

Copy of successful/final offer to be attached herein