

NORTH COUNTY TRANSIT DISTRICT



PROCUREMENT & CONTRACT ADMINISTRATION DIVISION

REQUEST FOR PROPOSALS (RFP)

RFP# 32557

FOR

On Call Marketing and Communications

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SECTION 01: NOTICE TO PROPOSERS

01.01 SUMMARY

The North County Transit District (NCTD) seeks proposals for an On-Call Marketing and Communications Contractor (Work). This RFP will result in an indefinite demand, indefinite quantity contract. Work will be awarded via Task Order Agreements using the evaluation criteria set forth in this RFP. The minimum Agreement award amount will be \$1,000. Based on market research, NCTD's procurement history and anticipated needs for similar goods and services, and trends on availability of funding sources, the maximum contract award amount will be in the range of \$500,000.00 to \$1,396,000.00.

01.02 PROPOSAL SUBMISSION

ELECTRONIC ONLY – Proposers will submit documents exclusively through NCTD's online bidding system, PlanetBids. All required forms must be included with proposal as PDF attachments and include signature of an individual authorized to bind firm. Electronic proposals will be received on or before 2:00 PM PDT on Tuesday, May 23, 2023 for the Work. Specific submission requirements are contained in the "General Instruction for Proposers" section of this RFP.

Federal funds will not be utilized in the performance of the Agreement.

01.03 NON-MANDATORY PRE-PROPOSAL CONFERENCE

Proposers are strongly encouraged to attend the Pre-proposal Conference held via Teams on April 28, 2023 @ 10:00 AM:

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 259 615 358 823

Passcode: JnHgFd

[Download Teams](#) | [Join on the web](#)

Or call in (audio only)

[+1 805-696-2848,,100934347#](#) United States, Santa Barbara

Phone Conference ID: 100 934 347#

[Find a local number](#) | [Reset PIN](#)

01.04 COMMUNICATIONS

All communications relating to this RFP must be directed through the questions and answers (Q&A) tab within the solicitation posted on the NCTD bid management system "PlanetBids Vendor Portal". Any contact with NCTD during the solicitation period outside PlanetBids is grounds for disqualification. Questions or requests for clarification and their answers will be posted directly on PlanetBids.

Proposers shall submit questions, as specified above, no later than 2:00 PM PDT on May 11, 2023

NCTD changes to any part of the RFP, technical specifications, or requirements will be through the issuance of an Addendum sent to all prospective proposers who have downloaded the solicitation from the NCTD PlanetBids Vendor Portal.

Proposers are cautioned that oral communication such as opinions, comments, explanations, responses to questions, etc. are not binding on NCTD. Proposers shall not make contact with NCTD staff, other than the assigned Contract Officer with regard to any aspect of this solicitation.

01.05 CONFLICT OF INTEREST

Any verbal or written communications between any potential or actual Proposer or its representatives between the time of procurement preparation by NCTD's Procurement and Contract Administration Department and time of award of the Agreement(s), communicate, either verbally or in writing, with any of the following concerning the requirements of this solicitation or concerning any aspect of the solicitation process: (1) any board member, officer, employee, or representative of NCTD; or (2) any consultant, or employee of a consultant, providing NCTD with assistance, advice, or professional services relating to the matters covered by the solicitation or who is involved in any aspect of the proposal or bid evaluation process. . The only exceptions to this are: (1) written requests regarding information or clarification made to NCTD's designated Contract Officer via PlanetBids during the allowable time period under the solicitation; and (2) any communications at a publicly-noticed meeting of the NCTD Board of Directors. Any violation of the requirements set forth in this section shall constitute grounds for immediate and permanent disqualification of the Proposer from participation in this procurement due to the potential creation of an unfair competitive environment and/or conflict of interest.

Proposers for this RFP are hereby put on notice that the scope of work may include tasks that could create a conflict of interest for the Contractor(s) awarded an Agreement and thus preclude award to it of future work by NCTD. Tasks within this RFP that could create such a conflict include the provision of environmental services for a future capital project, assistance in developing a scope of work, estimate, or evaluation criteria to be used in a future procurement. In general, NCTD must be able to rely on unbiased advisory services, and work by a Proposer on a past, future, or related project may cause Proposer to have a perceived or actual bias. If a Proposer is unsure of whether its work has or will create a conflict of interest potentially precluding it from working for NCTD, it can send a request for a determination of conflict to NCTD's Chief of Procurement and Contract Administration prior to the deadline for questions regarding this RFP.

01.06 CONTRACT OFFICER

Responsibility for this RFP has been assigned to:

Alesia Atkinson – Principal Contract Officer
North County Transit District
810 Mission Avenue
Oceanside, CA 92054

Please note that all communication regarding this solicitation must be made through PlanetBids.

01.07 VENDOR REGISTRATION REQUIREMENTS

To register to participate in this solicitation, go to www.gonctd.com and click on "Contracting Opportunities" at the bottom of the page. The Online Bidding System is described and contains a link to the registration page of the PlanetBids Vendor Portal for NCTD at the following web address <http://www.planetbids.com/portal/portal.cfm?CompanyID=20134>.

Contractors must register with PlanetBids to receive email notices for this solicitation. Registered contractors are responsible for ensuring that they have downloaded all documents including addenda, plans, specifications, drawings, and other supporting documentation for the project directly from PlanetBids that are necessary to submit a responsive and responsible proposal. Please contact the Contract Officer if you are unable to comply with this requirement.

For individuals with sensory disabilities, documents may be made available in alternate formats. For information regarding alternate formats, contact the Contract Officer listed in the solicitation or write Procurement & Contract Administration Division, North County Transit District, 810 Mission Ave., Oceanside, CA 92054.

01.08 AGREEMENT AND EXCEPTIONS

The Proposer shall be required to execute NCTD’s Agreement document, which is included in this RFP as an attachment. The Agreement, which will eventually incorporate this RFP and portions of the winning proposal(s) not in conflict with those terms, contains language that is standard to all NCTD Agreements and generally is not negotiable. Exceptions to Agreement language concerning insurance requirements or indemnification language must be made by the Deadline for Submission of Questions or Request for Clarifications. If NCTD is willing to modify its insurance or indemnification language, it will post the modified language as part of an Addendum. If NCTD is not willing to agree to the changes, it will post that information on PlanetBids and Proposer should propose with the expectation that the proposed amended or substituted language will not be accepted. All other proposed changes or supplements to the Agreement must be submitted as a redline no later than the Proposal Due Date. Failure to propose changes to the Agreement in accordance with these timelines shall be deemed a waiver by Proposer of any requests for changes.

01.09 ESTIMATED PROPOSAL SCHEDULE (SUBJECT TO CHANGE)

ACTIVITY	DATE/TIME
RFP Opportunity Advertisement	04/14/2023
Pre-Bid Conference	04/28/2023 at 10:00 AM PDT
Deadline for Submission of Questions or Request for Clarifications via PlanetBids Only	05/11/2023 at 2:00 PM PDT
Proposal Due Date and Time	05/23/2023 at 2:00 PM PDT

01.10 DISADVANTAGED BUSINESS ENTERPRISES PARTICIPATION

As a recipient of federal funding, NCTD has established Disadvantaged Business Enterprise (DBE) program goals and is required to report on DBE participation each year so that its attainment efforts may be evaluated. NCTD’s overall agencywide goal for Federal Fiscal Year 2023-2026 is 11.3%. The term DBE means a for-profit small business concern as defined in 49 CFR 26.5. Even if no federal funding will be used on the Agreement awarded pursuant to this solicitation and no DBE goal will be set, the selected proposer will still be required to document use of SBs and DBEs in the performance of its work.

The Agreement awarded as a result of this solicitation will not have federal funding. Whether or not there is federal funding, DBE contractors are highly encouraged to participate as a prime contractor or subcontractor on NCTD procurements.

Whether or not federal funding is used, Contractor shall submit a document entitled “Final Utilization Report” (“the FUR”) within 90 days after the date all Work is completed. NCTD is required to track use of DBE and small business firms on procurements, whether or not federal funding is used.

The DBE goal for this procurement is set at 0%. Additional DBE requirements applicable to the Agreement are set forth in detail in the Agreement. Contractor shall report subcontractor payment details for any DBE subcontractor or supplier to NCTD using PlanetBids by the 15th of each month. Subcontractors with lower tier DBE subcontractors shall report payment details to NCTD using PlanetBids within 15 days from the date payment is received from Contractor or higher tier subcontractor. Contractor is responsible for ensuring subcontractors are verifying payments through PlanetBids on a timely basis and shall promptly notify delinquent subcontractors to verify payments. NCTD may impose penalties or withhold payments up to \$10,000 each month under the Agreement if Contractor fails to timely report subcontractor payments or reasonably notify delinquent subcontractors to report verification of payments.

END OF SECTION

SECTION 02: GENERAL INSTRUCTIONS FOR PROPOSERS

02.01 DEFINITIONS

Whenever, in the RFP or Agreement, the following words are used, the intent and meaning shall be interpreted as follows:

Addenda - Contractor documents issued by NCTD while the RFP is open for proposal submissions that supplement or clarify the contents of the RFP.

Agreement - all of the contents of this RFP and associated Addenda, drawings, technical reports, technical specifications, Attachments, reports, and Proposer's proposal, and the conformed Scope of Work and associated project or payment schedules. Said documents shall be considered as part of any agreement made pursuant to this solicitation.

Contractor – a Proposer successful in being awarded an Agreement under the RFP.

Days - calendar days unless otherwise specified.

Executive Director - the Chief Executive Officer of NCTD or their authorized representative or agent.

Grand Total Proposal Price - the grand total price and shall include all direct and indirect labor and material costs, taxes, duties, fees, and any other charges applicable to complete the total requirements as specified in this RFP, including all addenda, contract drawings and technical specifications. NCTD is not tax exempt.

Hazardous Substances and/or Contaminated Materials - any substance, waste, or material that is determined by any state, federal, or local governmental authority to be capable of posing a risk of injury to health, safety, and/or the environment, including, but not limited to, all substances, wastes, and materials designated or defined as hazardous, extremely hazardous, or toxic pursuant to Section 311 of the Clean Water Act, 33 USC Sections 1321, et seq., Section 1004 of the Resource and Conservation and Recovery Act, 42 USC Sections 6903, et seq., Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC Sections 9601, et seq.; Section 25141 of the Hazardous Waste Control Law, California Health and Safety Code Sections 25117, et seq.; Section 25316 of the Carpenter Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code Section 25316; Section 25501 of the Hazardous Materials Release Response Plans and Inventory Law, California Health and Safety Code Sections 25280-25299, et seq., as may be hereinafter amended.

NCTD or Grantee - NCTD or its authorized representative or agent.

NCTD Board of Directors (Board) - the governing board of NCTD.

NCTD Contract Officer - the authorized agent or representative of NCTD designated to administer and ensure strict conformance to the RFP and Agreement.

NCTD's Representative - the authorized agents or representatives of NCTD designated to ensure strict conformance with the Agreement.

Notice of Intent to Award (NIA) – an award notification, an NIA, or a revised list of Proposers from NCTD to all Proposers identifying the intent to award to the responsive, responsible Proposer, conforming to the requirements of the RFP, determined to be the “Best Value” to NCTD following proposal opening and evaluation; and opens the period for protest in accordance with the provisions of this RFP.

Proposer/Proposers - persons, Contractors, or corporations providing a submission of a proposal to NCTD in the response to the solicitation.

Task Order Agreement – an Agreement Document issued under the Agreement authorizing Contractor to perform Work covered by the Scope of Work for this Agreement, within particular timelines and within a particular budget.

Work – All Contractor responsibilities, deliverables, and tasks described in the Scope of Work or elsewhere in the Agreement.

02.02 PROPOSER'S SATISFACTION

It is the responsibility of the Proposer to thoroughly examine and be familiar with the Agreement. The failure or omission of any Proposer to examine any portion of the Agreement shall in no way relieve any Proposer from obligations with respect to their proposal or to the Agreement. The submission of the proposal shall be taken as prima facie evidence of compliance with this section.

02.03 RFP FORM – SUBMISSION INFORMATION

Proposals must be submitted on the forms provided. Proposals submitted in any other form will be considered nonresponsive and shall not be considered. Proposals shall include a submission regarding the information and services requested. The proposal must be signed with the name and title of the person duly authorized to sign a binding offer. Blank spaces on the appropriate proposal forms must be properly filled in, and the content thereof must not be changed. All signatures shall be provided as legally binding handwritten signatures – typed signatures shall not be accepted. After signatures are placed in the appropriate places, pages can be scanned and uploaded to PlanetBids. Additions or changes shall not be made to the items mentioned therein. Any unauthorized conditions, limitations or provisions attached to a proposal shall be cause for its rejection and in no event shall be a part of the Agreement. The proposal submitted must not contain any interlineations, or other corrections unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction the surname or surnames of the person or persons signing the proposal. Proposals may be rejected if they show any alteration in form, are incomplete, or contain irregularities of any kind.

Proposals are required for the entire Work, unless instructed otherwise in this RFP. Proposals that are not for the entire Work, or are incompletely written or compiled may be considered nonresponsive and be rejected.

In the event that the Proposer is a joint venture or partnership, the Proposal declaration shall be submitted with the signatures of the authorized officers of both parties to the joint venture or partnership or attach a power of attorney naming the individual authorized to sign all necessary documents. The name of the individual who shall sign all necessary documents for the joint venture or partnership should the joint venture or partnership be awarded the Agreement, shall act in all matters relative to the Agreement resulting therefrom for the joint venture or partnership, shall be identified in writing on the document.

Delivery of electronic proposal documents: Firms will submit documents exclusively through NCTD's online bidding system.

Because proposals can at times be ambiguous, NCTD reserves the right to request additional information before making an award. NCTD also reserves the right to seek clarification from any Firm about any statement or part in its proposal that NCTD finds ambiguous.

02.04 CAMP PENDLETON ACCESS – NOT APPLICABLE

02.05 PROPOSERS INTERESTED IN MORE THAN ONE PROPOSAL

No person, contractor or corporation shall be allowed to make, file or be interested in, (as the prime contractor more than one (1) proposal for the same work unless alternate proposals are called for. A person, contractor or corporation is permitted to be part of proposal team as a subcontractor under as many Proposers acting as prime contractors as it wishes and may also submit a proposal as a prime contractor as well as subcontractor.

Where two (2) or more prime contractors desire to submit a single proposal in response to this RFP they should do so on a prime and subcontractor basis rather than as a joint venture. NCTD intends to contract with a single contractor and not with multiple contractors doing business as a joint venture.

02.06 RFP SPECIFICATION CHANGES

NCTD reserves the right to revise or amend the RFP or specifications up to the time set for the submission of proposal. Such revisions and amendments, if any, shall be issued by addenda to this solicitation. Copies of such Addenda shall be posted to NCTD's PlanetBids Vendor Portal. In the event

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that an addendum setting forth material changes, additions or deletions is issued when there is seventy-two (72) hours or less to the proposal opening date, NCTD will extend the proposal opening date by no less than three (3) business days. Clarification notices that do not significantly impact the Proposers' ability to submit a proposal shall not result in an extension of the proposal opening date.

02.07 ADDENDA

The effect of all Addenda to the RFP shall be considered part of the RFP and said addenda shall be made a part of the Proposal Package submitted to NCTD. It is the Proposer's sole responsibility to ensure that all Addenda have been acknowledged before submitting a response. Failure to acknowledge all Addenda may render the proposal package nonresponsive and result in its rejection.

02.08 APPROVED EQUAL REQUESTS – NOT APPLICABLE

02.09 WITHDRAWAL OF PROPOSALS

Prior to Proposal Closing: Any Proposer may withdraw its proposal, either personally or by written request, at any time prior to the scheduled time for opening of proposals. Any request to withdraw a proposal shall be so worded so as not to reveal the amount of the original proposals.

After Proposal Closing: No Proposer may withdraw its proposal for a period of one hundred twenty (120) days after the proposal closing date. Proposal may be subject to acceptance by the NCTD Board of Directors during this one hundred twenty (120) day period.

02.10 LATE PROPOSALS

The PlanetBids Vendor Portal will not accept submittals after the date and time specified.

02.11 VALIDITY OF PROPOSALS

All Proposals shall remain valid and binding for a period of one hundred twenty (120) days after the proposal closing date.

02.12 SINGLE PROPOSAL PROCEDURES

In the event a single proposal is received, NCTD must attempt to conduct a cost analysis of the proposal. The Proposer will cooperate with NCTD to assist in this analysis. The analysis is the process of examining the proposal and evaluating its separate cost elements.

02.13 REJECTION OF PROPOSAL

NCTD reserves the right to reject any and all proposals and to waive any informalities or irregularities in the proposal. If all proposals received are rejected, NCTD reserves the right to re-solicit the services by issuing a new RFP or to cancel the solicitation at any time prior to Agreement award and not award an Agreement.

02.14 OVERHEAD COST

NCTD will not reimburse Proposers for costs incurred in the preparation of a proposal, attendance at interviews, or conducting negotiations, at any time, whether before Agreement award, following Agreement award, or when a procurement is cancelled. In addition, NCTD will not reimburse Contractor for preparation of invoices or administrative reports. These costs shall be included in overhead and shall not be separately billed to NCTD.

02.15 AWARD OF AGREEMENT

The award of an Agreement will be made by NCTD on the basis of the evaluation criteria of the RFP documents after determinations of responsiveness and responsibility (technical and financial) has been made.

If the Agreement value exceeds five hundred thousand (\$500,000), approval to award an Agreement by the NCTD Board of Directors is required.

Following the award and execution of the Agreement and receipt of required insurance certificates including endorsements, the Contractor shall receive a fully executed Agreement. Commencement of work by the Contractor before receipt of the fully executed Agreement is at the sole risk and expense of the Contractor who shall be fully liable for any damage or injury sustained by NCTD or third parties resulting therefrom.

NCTD reserves the right to award multiple Agreements when/if it is determined by NCTD that it is in the best interest of NCTD to do so.

02.16 PROTEST PROCEDURES

NCTD's Protest Procedures can be found here: [Protest-Procedures-Final-June-2022.pdf \(gonctd.com\)](https://gonctd.com/Protest-Procedures-Final-June-2022.pdf)

END OF SECTION

SECTION 03: SCOPE OF WORK

A. Background:

NCTD is a public agency established and designated as a Special District pursuant to California's Public Utility Code §125000. The NCTD Marketing Department is tasked with the core goals of increasing transit system ridership and customer revenue, and supporting brand management through effective and proactive communications and community outreach. The Marketing Department also handles public outreach related to service impacts, as well as media relations and emergency/crisis communications. To supplement its staff and support its services to the District, NCTD is in need of on-call Marketing and Communications services (the "Work").

B. Scope Description

Contractor shall assist North County Transit District (NCTD) by expanding the public outreach and marketing strategy for the NCTD public transportation system.

Contractor shall be experienced in traditional and nontraditional media advertising, including but not limited to word of mouth advertising, social media, research, and public relations. Contractor shall provide assistance on ongoing campaigns that incorporate a wide range of marketing strategies that will effectively promote the use of public transit, increase awareness and ridership, and implement branding of NCTD services to key audiences including but not limited to:

- Existing core riders
- Existing occasional riders
- General public/non-riders

Contractor shall assist in developing, implementing, measuring, and maintaining NCTD preapproved marketing campaigns, promotions, programs, and materials for the various stakeholder groups listed above.

Contractor shall provide support for existing marketing and community outreach activities. Contractor shall provide creative and strategic input to develop and facilitate implementation of service-wide targeted marketing activities that will best achieve the objectives of NCTD and can be measured to demonstrate results from those marketing actions implemented.

The term of the Agreement will be for a three (3) year period with the option to extend for two (2) one (1) year terms.

The nature of the proposed Agreement is Task Order based. All Work shall be issued and defined through the Task Order process. In general, awarded tasks may take a wide range of time to complete, some may be as short as a few days, while others may require several months to complete. Milestones, schedules, and deliverables will be identified through the Task Order authorization process.

The Scope of Work to be provided by Contractor includes the following:

1. General Marketing and Communication Plan Support

A. Objectives:

- a. Educate the public about NCTD's commitment to expanding and enhancing transit service, improving overall customer experience, and meeting regional expectations for transit ridership.
- b. Improve internal and external opinion of NCTD as a regional transportation service provider, including its efforts to insource its services.
- c. Improve NCTD's internal and external communications to clearly express initiatives, branding, messaging, and strategy.

B. Support related to the following projects:

1. Insourcing of services
2. New and existing rider programs and initiatives
3. Infrastructure expansion and improvements
4. Comprehensive operations analysis
5. Parking management and offers, and fee schedule updates
6. Website, intranet and social media promotions and updates
7. Regional fare changes and promotional or pilot fare products
8. Public education regarding NCTD funded, unfunded and completed projects and needs
9. Ridership recovery
10. Development projects
11. Regional, national, and local transportation issues and topics

- C. **Strategic Outreach and Communications Plan development/schedule:** Contractor may develop a strategic outreach and communications plan, to include goals, messaging, stakeholder lists, strategies and tactics and a schedule as well as assist with execution of the plan, as needed.
- D. **Press releases:** The press release (PR) for each project will require the Contractor to gather data from NCTD and other outside sources, craft a draft PR, submit it to NCTD for approvals and edits, and produce a final product. While some projects may require more PRs than others, NCTD assumes each project will require an average of three.
- E. **Collateral creation and design:** Each project will have collateral associated with it that needs to be crafted. The Contractor will need to collect data, decide the purpose of the collateral, create draft collateral that aligns with approved messaging for NCTD's edits and then deliver final materials to NCTD. Collateral materials may include, but are not be limited to brochures, fact sheets, briefing decks, maps, web page design, stakeholder materials, flyers, posters, videos, commercials, digital ads, song licenses, social media posts, etc. The creation of collateral materials shall also include graphic design by the Contractor for approval by NCTD.
- F. **Copywriting:** Projects will require the drafting and editing of copy to communicate about the project to internal and external sources. Depending on the project, this may include messaging for newsletters, web page copy, letters to the editor, op-eds, media responses, presentations, memos, letters, NCTD Board of Directors notification, technical writing, etc. The Contractor shall

collect data, decide the purpose of the communication, align with approved messaging, and create draft communication for NCTD's edits and approval.

- G. **Special Events:** Some projects may require coordination of special events to effectively communicate the project's benefits to the public and the media. Contractor shall develop the event plan in conjunction with NCTD (including date, location, messaging, audio-visual needs such as videos, commercials, and permitting requirements), communicate with speakers, draft talking points, invite and communicate with media, develop media advisories, and guest lists, and coordinate the day-of event. Special events will also include the Contractor coordinating with existing external events in which NCTD will participate.

END OF SECTION

SECTION 04: EVALUATION AND SELECTION

04.01 PROPOSAL REQUIREMENTS AND ORGANIZATION

Proposer shall review and base their proposal on the Scope of Work and in accordance with the terms and conditions of the RFP. Strict conformance to the specified proposal format and completeness of required content is essential. Lack of any listed item may disqualify the proposal. The proposal should give clear and concise information in sufficient detail and in the order presented below to allow an evaluation based on the requirements. All requirements are considered necessary for evaluation. The expectation is that those proposals in the competitive range and considered for Agreement award will exceed the minimum requirements.

All responses and attachments shall be sequentially numbered to correspond to the applicable question or requirement.

04.02 EVALUATION FACTORS

The proposal evaluation factors are listed in their relevant order of importance:

1. Technical Approach and Quality of Proposal
2. Personnel and Qualifications (Knowledge, Experience, Qualifications)
3. Proposed Staffing, Implementation and Review Approach
4. Price Proposal

04.03 SUBMITTAL INSTRUCTIONS AND REQUIREMENTS

Proposers shall review and base their proposal on the Scope of Work located in the RFP, all terms and conditions of the RFP, and evaluation criteria. Strict conformance to the specified proposal format and completeness of required content are essential. Lack of any listed item may disqualify a proposal, at NCTD's discretion.

Proposals shall be submitted in any easy-to-read format. Each section of the proposal shall be tabbed in accordance with the below numbering system as to aid in expedient location of information and provide for consistent proposal organization:

Tab 1: Cover Letter: Identify the proposal by the RFP title. Provide a summary emphasizing the distinguishing factors that highlight Proposer's ability to perform the services described herein. It should be brief (two (2) pages maximum), and include all contact information inclusive of the name, address, telephone number, title, and signature of the contact person for this procurement. The signatory shall also be a person with the official authority to bind the Proposer.

Tab 2: Qualifications and Experience: Provide a summary of Proposer's background, skills and experience in the subject-matter and overall performance of services associated with the Scope of work. Provide a detailed list of key personnel in the proposed team, their titles, and tasks to be assigned relative to the services identified in the Scope of work.

Tab 3: Past Performance (references): Describe specifically Proposer's experience in providing services listed in the Scope of work similar in scope, magnitude, and complexity. This should include references from past and current projects (including with NCTD, if applicable). This should also include relevant past performance from the proposed team, including Proposer and its subcontractors. This is in addition to the required reference forms attached as an Appendix.

Tab 4: Technical Approach: Provide a narrative illustrating the approach to providing the deliverables for each task, which shall include but is not limited to: quality assurance methods, proposed schedule/timelines with milestones, roles and responsibilities, capabilities and capacities, and administrative approach. If any software licenses other than Microsoft 365 or Adobe will need to be purchased by Proposer or NCTD in order to carry out the Work and interact with NCTD, Proposer shall provide a list of such licenses and any costs that would be borne by NCTD under the Agreement for their use. Any such licenses needed by NCTD shall be issued in NCTD's name and associated costs shall be listed in the Price Proposal.

Tab 5: Required Submittal Documents. Complete and sign all attachments to the RFP.

Tab 6: Price Proposal. Complete Price Proposal as provided and include any other pertinent cost information.

04.04 PROPOSAL EVALUATION METHOD AND SCORING

NCTD will consider the Source Selection Committee (SSC) proposal scoring, risk factors, and final proposal price, and its business judgement to choose the proposal that represents the overall best value to NCTD.

Each of the RFP evaluation factors will be rated by the SSC using the following adjectives and numerical values as defined:

1. Excellent: Fully complies with the RFP requirements with the most desirable strengths and/or betterments, contains no errors, risks, weaknesses, or omissions. Exceeds in all aspects of the requirements; high probability of success, no significant weaknesses. (Numerical Value: 90-100)
2. Good: Compliant with RFP requirements with no errors, or risks, or weaknesses, or omissions. Substantial response; meets all aspects of the requirements and in some cases exceeds; high probability of success; no significant weaknesses. (Numerical Value: 80-89)
3. Adequate: Minimally compliant with the RFP requirements has errors, or risks, or weaknesses, or omissions, and is doubtful they be corrected and made acceptable. Generally meets minimum or critical requirements; slight probability of success; weaknesses most likely cannot be readily corrected. (Numerical Value: 70-79)
4. Poor: Non-compliant with the RFP requirements, has errors, risks, weaknesses, or omissions and will be impractical or inefficient to correct and make acceptable; requires major revision. Lacking essential information; does not meet minimal requirements; significant weaknesses, and near zero probability of success. (Numerical Value: 0-69)

04.05 EVALUATION PROCESS

Proposals will be evaluated based upon the information provided in response to the RFP. An SSC will be established of individuals with experience and expertise deemed relevant in order to evaluate the proposal. The SSC may include representatives from NCTD, both voting and non-voting members (Technical Advisors), representatives from other agencies, and the general public.

NCTD reserves the right to request clarification and/or request additional information from the Proposer if necessary. Such clarifications and/or additional information shall be submitted by the Proposer as a supplement to their proposal upon request of the Contract Officer. However, since no additional input may be requested, Proposer is advised to submit complete information in their proposal. Steps 4-6 are at the sole discretion of NCTD, Proposer is advised to submit their proposal without the expectation of NCTD to exercise any of the options.

STEP 1: RESPONSIVENESS AND RESPONSIBILITY REVIEW

The Contract Officer shall perform an evaluation of all proposals in order to determine if a Proposer meets the requirements of the RFP and to ensure that unacceptable exceptions or conditions are not proposed. This is a "Pass/Fail" determination. NCTD reserves the right to waive any minor irregularities or to seek additional clarifications from Proposers. Only proposals receiving a "Pass" determination will be evaluated further.

STEP 2: EVALUATION OF TECHNICAL PROPOSAL

The technical portion of the proposal shall be evaluated and scored based on findings of strengths and weaknesses of how responsive each technical proposal is to the stated "Evaluation Criteria".

After evaluations, NCTD's Contract Officer may request additional detailed elements of the proposals or clarifications. This process does not constitute negotiations. Negotiations may be conducted at the discretion of NCTD. NCTD reserves the right to award an Agreement without discussions or negotiations.

STEP 3: EVALUATION OF PRICE PROPOSAL

The overall total price to be charged to NCTD will be considered in the evaluation. Although price may be of lesser importance as an evaluation factor, it should not be ignored. The degree of importance will increase with the degree of quality of proposals with respect to the other “Evaluation Factors”.

Once Steps 1-3 are completed the SSC will determine the competitive range using the non-exclusive list of criteria contained in the “Evaluation Factors”. Only proposals within the competitive range will continue in the evaluation process.

STEP 4: ORAL PRESENTATIONS OR INTERVIEW/S (IF REQUESTED BY NCTD)

The SSC may authorize the use of oral presentations and/or interviews as a method of presenting the Proposer's proposal or obtaining additional information. If applied, the SSC will invite competitive Proposers to make a presentation to, or participate in interviews with NCTD at a date, time and location determined by NCTD. The purpose of such presentations or interviews would be to allow the Proposer to present their proposed solutions to NCTD and for the SSC to obtain additional information; the key points in the presentations and interviews will be evaluated by the SSC.

STEP 5: NEGOTIATIONS

The SSC may, at its sole discretion, enter into negotiations with any Proposer(s) found to be in the competitive range. Negotiations may include, but not be limited to: scope of work, Agreement schedule, contract terms and conditions, technical specifications, and price. NCTD has sole and final authority to terminate negotiations and exercise other options available to procure such services.

STEP 6: BEST AND FINAL OFFER (IF REQUESTED BY NCTD)

The SSC may also ask for a Best and Final Offer (BAFO) at any time prior to its final determination and rescore as necessary, always using the “Evaluation Factors” and the “Proposal Evaluation Method and Scoring” described herein.

STEP 7: FINAL DETERMINATION

It is the task of the SSC to independently score each proposal and then collectively determine which proposal is the “Best Value” to NCTD based upon the evaluation method scoring, risk factors assigned and final proposal costs. The Proposer, or Proposers if applicable, deemed to be the “Best Value” will be the Proposer, or Proposers, recommended to the Board of Directors for award. If the Agreement award is not required to go to the Board of Directors, the Agreement will be executed by the Chief Executive Officer or designee.

END OF SECTION

SECTION 05: INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the Work hereunder and the results of that work by the Contractor, its agents, representatives, employees, or sub-contractors. Commercial general liability, workers' compensation, employer's liability, and automobile liability coverage are required. All required insurance types and limits are included in attached Agreement sample and should be reviewed carefully by Proposer, its risk personnel, and insurance carrier(s) prior to proposing.

Prior to Agreement award, Contractor shall be required to submit Certificates of Insurance with the limits specified in the Agreement via PlanetBids using the My Insurance feature. If you need assistance with this, please click on the Help Center (top right) in PlanetBids to see instructions. If further assistance is needed enter a support ticket with PlanetBids or call it directly for assistance.

END OF SECTION

SECTION 06: GENERAL CONDITIONS

06.01 SENSITIVE SECURITY INFORMATION (SSI) – NOT APPLICABLE

06.02 PREVAILING WAGE MONITORING REQUIREMENTS – SB 854 – NOT APPLICABLE

06.03 FEDERAL REQUIREMENTS – NOT APPLICABLE

06.04 FRAUD

The Proposer certifies and affirms through execution of the False Claims Certificate, contained in this solicitation, the truthfulness and accuracy of any statement it has made, it makes, it may make or causes to be made, pertaining to the underlying Agreement or the FTA-assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Proposer further acknowledges that if it makes, or causes to be made, a false or fictitious, or fraudulent claim, statement, or submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Proposer to the extent the Federal Government deems appropriate.

The Proposer 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 Proposer, to the extent the Federal Government deems appropriate.

The Proposer agrees to include the above two (2) clauses in each subcontractor agreement 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.

The Proposer acknowledges that NCTD has the right to revoke acceptance if it was deceived into an acceptance by fraud. Fraud involves an intentional deceit or falsehood. Acceptance due to fraud may be revoked even if the defect was patent.

06.05 CONTRACTOR SAFETY TRAINING AND RWP TRAINING – NOT APPLICABLE

06.06 CONFLICT OF INTEREST

The Proposer awarded the Agreement may be/will be given tasks requiring it to assist NCTD with procurement-related tasks such as preparation of scopes of work/specifications, product recommendations, cost estimates (other than high/concept level estimates for determining project feasibility), or evaluation criteria to be used in a future procurement. Proposer will be barred from submitting a proposal or bid as a prime contractor or as a subcontractor that is part of the prime contractor's proposing team due to conflict of interest. At all times during the term of the Agreement, Proposer shall immediately report to the NCTD's Contract Officer, any actual or potential conflict of interest it may have due to having an ownership interest of any kind in an entity that Proposer recommends to NCTD for an expenditure of public funds.

Any contractor listed below has been associated with the development and/or the preparation of this RFP and are provided for informational purposes only. This list is not intended to be relied on for purposes of compliance with any conflict of interest rules or applicable laws or regulations affecting this RFP. Proposer is solely responsible for due diligence in identifying and avoiding all potential conflicts of interest related to contracting for and performing the services as required by this RFP and resulting Agreement.

- NONE

06.07 SOCIAL MEDIA

Contractor is prohibited from using any social media to reference any ongoing proposal or solicitation process without NCTD's express written permission. Please see the terms of the Agreement as provided in the Agreement for any additional requirements or obligations

06.08 PUBLIC RECORDS ACT/CONFIDENTIALITY OF PROPOSALS

Access to government record is governed by the laws of the State of California under the California Public Records Act (Gov. Code 6250, et seq.) [Act]. Proposal price forms submitted to NCTD in response to this RFP are public records and may, therefore, be disclosed in accordance with the California Public Records Act. Requests for records or debriefing from NCTD related to proposals submitted or evaluations will not be provided by NCTD until after this RFP is cancelled or an Agreement is fully executed, pursuant to Government Code §6255 and Michaelis, Montanari & Johnson v. Superior Court, (2006) 38 Cal. 4th 1065.

Any proprietary information, trade secrets or confidential commercial and financial information that Contractor believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not ensure confidentiality.

The Contractor shall submit proprietary information, trade secrets or confidential commercial and financial information, which Contractor believes should be exempted from disclosure, in a separate volume specifically identified and marked as "Confidential", or "Trade Secret", or "Proprietary", or a similar designation.

NCTD will release proposal cost or price forms in response to a Public Records Act request subject to the requirements of California Government Code §§ 6250 et seq., so long as the proposal cost or price form does not contain trade secrets as defined by the Civil Code. Proposal price forms submitted to NCTD are public records and may, therefore, be disclosed in accordance with the California Public Records Act.

The Contractor agrees to indemnify and defend NCTD in the event NCTD withholds production of Contractor's records that Contractor has marked "Confidential", or "Trade Secret", or "Proprietary", or similar designations, that are responsive to a Public Records Act request pursuant to California Government Code section 6250, et seq. or a Freedom of Information Act request. See attached Public Records Act Indemnification Certificate.

06.09 ASSIGNMENT AND SUBCONTRACTING

Nothing shall prevent the Proposer from employing independent associates and subcontractors as the Proposer may deem appropriate to assist in the performance of the Agreement, however, Contractor shall not assign, sublet, or transfer the Agreement or any rights under or interest in the Agreement without the written consent of NCTD, which may be withheld for any reason.

Certain work may be purchased or contracted from an outside source under a subcontract, and the Proposer shall assume full responsibility for all work and materials. NCTD reserves the right to approve the use of any subcontractor and the Proposer must make a request in writing to use a subcontractor not already named in the proposal or Agreement. Proposer shall provide a copy of any subcontract related to this Agreement within ten calendar days of a request from NCTD. All subcontracts involving the Work shall pass through all applicable provisions in this Agreement, including but not limited to federal provisions and prevailing wage requirements that may be provided herein.

06.10 COMMENCEMENT OF AGREEMENT SERVICES:

1. Following the execution by both parties of Agreement Document and receipt of required insurance certificates, the Proposer shall receive a Fully Executed Agreement (FEC) authorizing the commencement of work in accordance with the Period of Performance as stated in the contract. Commencement of work by Proposer before receipt of the FEC is at the sole risk and expense of the Proposer who shall be fully liable for any damage or injury sustained by NCTD or third parties resulting therefrom.

2. The Proposer shall begin work immediately upon receipt of the FEC and shall complete all of the work as required.
3. For On-Call Contracts Only:
 - a. Any work, proposed and authorized by a Task Order Agreement is on an “as-needed” or “on-call” basis, there is no commitment under the Agreement by NCTD to provide enough additional work to keep Proposer personnel working on a full-time basis. The Not-To-Exceed (NTE) value of the Agreement is only for internal administrative reasons and is not a commitment of the value of work to be assigned.
 - b. Once the Agreement is executed, the method of task assignment or Task Orders from NCTD will be by issuance of a fully executed Task Order Agreement confirming acceptance of the Proposer’s quote. This is the only method under the Agreement that authorizes work to be proceed. Any work performed in advance of the fully executed Task Order Agreement is at the Proposer’s own risk and may result in late payments or denial of payment request. Oral direction the Project Manager (PM) is not authorization to proceed or perform work. In the event of any such oral direction, the Proposer is to immediately contact the assigned Contract Officer.

06.11 ADDING PERSONNEL TO THE AGREEMENT

The Proposer shall identify key personnel assigned to be assigned Work under the Agreement in its proposal. Such key personnel shall not be replaced or removed without approval by NCTD. Key personnel shall be identified in the proposal for not only the Proposer but also all subcontractors. Addition of personnel or subcontractors shall only be permitted with advance approval from NCTD in accordance with the process described in the Agreement.

06.12 CONSULTING WORK REQUIRING A FINAL WRITTEN REPORT

In addition to any deliverables identified in the Scope of Work or elsewhere in the Agreement, if the engagement results in a study or consulting work of any type that requires a final report to be submitted, the Proposer will be required to provide an oral presentation of the contents of the final report to the NCTD management team. Scheduling of such a presentation will be coordinated by the NCTD Project Manager and is to occur within fifteen (15) calendar days from the date of the submittal of the final report within the NCTD General Administration Office located in Oceanside, CA.

06.13 METHOD OF COMPENSATION

The method of payment shall be as described in the Agreement. If compensation is to be based on fixed fees negotiation of those fees will be based on information in the Price Proposal.

END OF SECTION

SECTION 07: SUBMISSION DOCUMENTS

The documents of this part of the RFP must be completed by each Proposer and submitted with the proposal at time of submission. If all documents identified below are not submitted and/or are not complete and executed, the proposal may be classified as non-responsive and may not be considered further. Typed or electronic signatures will not be accepted.

The following check-off list is provided to assist in assuring a complete submission.

1.	<input type="checkbox"/>	PROPOSAL DECLARATION FORM
2.	<input type="checkbox"/>	CERTIFICATE OF EXCEPTIONS
3.	<input type="checkbox"/>	PROPOSER'S QUESTIONNAIRE FORM
4.	<input type="checkbox"/>	LIST OF SUBCONTRACTORS
5.	<input type="checkbox"/>	WORKER'S COMPENSATION CERTIFICATE
6.	<input type="checkbox"/>	CERTIFICATION OF RESTRICTIONS ON LOBBYING
7.	<input type="checkbox"/>	ELIGIBILITY CERTIFICATION
8.	<input type="checkbox"/>	CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION
9.	<input type="checkbox"/>	CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION – FOR EACH SUBCONTRACTOR
10.	<input type="checkbox"/>	PUBLIC RECORDS ACT INDEMNIFICATION CERTIFICATE
11.	<input type="checkbox"/>	GUARANTY
12.	<input type="checkbox"/>	EEO CERTIFICATE
13.	<input type="checkbox"/>	FALSE CLAIMS CERTIFICATE
14.	<input type="checkbox"/>	DISADVANTAGED BUSINESS ENTERPRISE INFORMATION – PRIME
15.	<input type="checkbox"/>	DISADVANTAGED BUSINESS ENTERPRISE CERTIFICATION, IF APPLICABLE
16.	<input type="checkbox"/>	DISADVANTAGED BUSINESS ENTERPRISE INFORMATION – FOR EACH SUBCONTRACTOR (ATTACH COPY OF CERTIFICATION)
17.	<input type="checkbox"/>	REFERENCE CHECK FORM (THREE (3) REFERENCE CHECK FORMS REQUIRED FOR SUBMISSION)
18.	<input type="checkbox"/>	NON-COLLUSION AFFIDAVIT
19.	<input type="checkbox"/>	IRAN CONTRACTING ACT CERTIFICATION (Required if in excess of \$1,000,000)
20.	<input type="checkbox"/>	PRICE PROPOSAL (<i>Original signed hardcopy with the proposal</i>)
<p>The following items shall be provided by the Contractor as indicated in NCTD's Notice of Award and are required prior to commencement of work and issuance of a Notice to Proceed.</p>		
1.		INSURANCE CERTIFICATES – REQUIRED FROM AWARDEE
2.		VENDOR INFORMATION SHEET *From Contractor who has never done business with NCTD -available from NCTD Procurement and Contract Administration Division.

PROPOSAL DECLARATION FORM

North County Transit District
810 Mission Avenue
Oceanside, CA 92054

Having carefully examined the Notice, Information for Proposers, and all parts of the RFP, the undersigned proposes to provide the required services to NCTD according to the RFP requirements. Bidder has reviewed the Protest Procedures located at: [Protest-Procedures-Final-June-2022.pdf \(gonctd.com\)](http://gonctd.com/Protest-Procedures-Final-June-2022.pdf).

The undersigned declares that this offer is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, or sham; that the undersigned has not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal and has not directly or indirectly colluded or agreed with any Proposer or anyone else to put in a sham proposal or to refrain from submitting a proposal; that the undersigned has not directly or indirectly sought by Agreement, communications or conference with anyone to fix their prices or the prices of any other Proposer, or to fix any overhead, profit or cost element of such price or of that of any other Proposer, or to secure any advantage against NCTD or anyone interested in the proposed Agreement; that the only persons or parties interested in this proposal as principals are those named herein; that all statements contained in this proposal are true; that the undersigned has not directly or indirectly submitted their prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any other person, partnership, corporation or association except to such person or persons as have a direct financial interest in Proposer's general business.

The undersigned agrees to perform the Work exactly as described in the Agreement, unless otherwise authorized after Agreement award by a written NCTD Supplemental Agreement, and that the Agreement requirements will be completed as required by the RFP and confirms that the response to proposal is in complete compliance with the requirements of the RFP document unless specific exceptions have been submitted to NCTD within the timelines prescribed by the RFP.

Receipt is acknowledged of the following Addenda, number(s) _____ (if none were received, the Proposer is to state "none".)

Official, legal name of Contractor or individual (Type or Print) offering the proposal:

Print Name: _____ Title: _____

Signed by: _____ Date: _____

CERTIFICATION OF EXCEPTIONS

The Proposer hereby certifies that it takes no exception(s) to this RFP.

Official, legal name of Contractor or individual (Type or Print) offering the proposal

Print Name: _____ Title: _____

Signed by: _____ Date: _____

OR

The Proposer hereby certifies that it takes exception(s) to this RFP.

Official, legal name of Contractor or individual (Type or Print) offering the proposal

Print Name: _____ Title: _____

Signed by: _____ Date: _____

If the Proposer does take exception(s) to any portion of the RFP or Agreement, the specific portion of the RFP or the Agreement Document to which exception(s) is taken shall be identified and explained in a redlined version of the Agreement and submitted with the proposal.

PROPOSER'S QUESTIONNAIRE FORM

1. Legal Name of Proposer: _____
Address: _____
Contact Name: _____
Phone: _____ Fax: _____ Email: _____
Company DUNS #: _____

2. Name Proposer's principal financial institution for financial responsibility reference:
Name of Bank: _____
Street Address: _____
City and State: _____ Telephone: (____) - _____
Officer Familiar with Proposer's Account: _____

3. The following are the names, titles, addresses, and phone numbers of all individuals, partners, joint ventures, and/or corporate officers having a principal interest in this bid:

4. The date of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this bid are as follows:

5. In the past five years, has Bidder been a party to litigation alleging violation of a federal law, fraud, or negligence in its work that could materially affect its ability to perform if it is awarded the Agreement? If so, when, where, and what was the outcome?

6. Does Proposer represent that it has adequate financial resources and staff to perform the Scope of Work (SOW) for this solicitation? ___ No ___ Yes If no, provide an explanation.

7. Does Proposer have any reason to believe it has actual or potential conflicts of interest related to NCTD or that would interfere in any way with Proposer's performance of the SOW or ability to provide unbiased advice to NCTD for this solicitation?

___ No ___ Yes If yes, provide an explanation.

8. Does Proposer have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability?

___ No ___ Yes If yes, provide an explanation.

9. Have any of Proposer's management or executive level personnel been convicted of a felony criminal violation under any Federal law within the preceding 24 months?
___ No ___ Yes If yes, provide an explanation.

10. Have any licenses Proposer will rely on for the Scope of Work lapsed or been revoked at any time in the last five years?
___ No ___ Yes If yes, provide an explanation.

11. All current and prior DBAs, alias, and/or fictitious business names for any principal having an interest in this bid are as follows:

12. Has Proposer ever failed to complete any work awarded to it? If so, when, where and why?

13. In which state(s) is Proposer's business registered with the applicable Secretary of State?

14. Is Proposer registered on SAM.gov? ___ No ___ Yes If no, register at www.SAM.gov.

The person signing this form agrees and confirms that he/she/they is authorized to sign it on behalf of Proposer and all statements are true and correct as of the date signed. Typed signatures are not permitted.

Print Name: _____ Title: _____

Signed by: _____ Date: _____

LIST OF SUBCONTRACTORS FORM

Proposer shall complete all portions of the List of Subcontractors form attached hereto.

If Proposer fails to specify a subcontractor, it shall be deemed to have agreed that it is fully qualified to perform that portion itself, and that it shall perform that portion itself.

No Proposer whose proposal is accepted shall (a) substitute any subcontractor, (b) permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original proposal, or (c) sublet or subcontract any portion of the work without advance permission from NCTD.

LIST OF SUBCONTRACTORS

The Contractor shall not substitute any subcontractor, permit any subcontract to be voluntarily assigned or transferred, or allow it to be performed by anyone other than the original subcontractor listed in the original proposal, or sublet/subcontract any portion of the work without the prior written permission of NCTD.

Name of Sub-contractor	If Applicable, License Number/Expiration Date	Email Address	Address and Phone Number	Total Compensation of Sub and % of Total Agreement Amount	Specific Description of Subcontracted Work	CUCP DBE and/or DGS Certified SB Number
				\$ _____ _____ %		
				\$ _____ _____ %		
				\$ _____ _____ %		
				\$ _____ _____ %		
				\$ _____ _____ %		
				\$ _____ _____ %		

1. Use additional sheets as necessary.
2. The Proposer will not substitute any person, contractor, or corporate organization as subcontractor in place of the subcontractors designated in the original proposal without the written consent of the NCTD Contract Officer.
3. Value of subcontract and percent of total contract must be presented at time of proposal submission.
4. Caltrans certified DBE Contractors can be found at the following website: <https://californiaucp.dbesystem.com/>
California Dept. of General Services (DGS) certified Small Business (SB) Contractors can be found at the following website: <https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

WORKERS' COMPENSATION CERTIFICATE

I am aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of the Labor Code and I will comply with such provisions before commencing the performance of the Work of this Agreement.

Official, legal name of Contractor or individual (Type or Print) offering the proposal.

Print Name: _____ Title: _____

Signed by: _____ Date: _____

CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____ hereby certify on behalf of
(Type name)

_____ that:
(Name of company)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontractors, sub-grants, and contracts under grants, loans, and cooperative Agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 20__.

Official, legal name of Contractor or individual (Type or Print) offering the proposal

Print Name: _____ Title: _____

Signed by: _____ Date: _____

ELIGIBILITY CERTIFICATION

Federally funded

If federally funded, the award of this Agreement is subject to a financial assistance contract between the North San Diego County Transit Development Board and the U.S. Department of Transportation. Any name appearing on the Comptroller General's list of ineligible Offeror for federally-financed or assisted contracts is not eligible for this contract.

If federally funded, the Firm shall certify the following:

I hereby certify that neither I, the Offeror, nor any officers or holders of a controlling interest are on the U.S. Comptroller General's list of ineligible Offerors for federally-funded and assisted contracts. In the event any of the above persons or parties become included on such a list during the performance of this project, NCTD shall be promptly informed of this fact.

Not federally funded

NCTD has determined that any name appearing on the Comptroller General's list of ineligible Offeror for federally-financed or assisted contracts is not eligible for this Agreement, regardless of the funding source.

If not federally funded, Contractor shall certify the following:

I hereby certify that neither I, the Proposer, nor any officers or holders of a controlling interest are on the U.S. Comptroller General's list of ineligible offerors for federally-funded and assisted contracts. In the event any of the above persons or parties become included on such a list during the performance of this project, NCTD shall be promptly informed of this fact.

Official, legal name of Contractor or individual (Offeror) (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Proposer certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
5. The award of this Agreement is subject to a financial assistance contract between the NCTD and the U.S. Department of Transportation. Any name appearing on the Comptroller General's list of ineligible Contractor for federally financed or assisted contracts is not eligible for this contract.
6. The Contractor hereby certifies that neither it nor any of its officers or holders of a controlling interest are on the U.S. Comptroller General's list of ineligible contractors for federally funded and assisted contracts. In the event any of the above persons or parties becomes included on such a list during the performance of this project, NCTD shall be promptly informed of this fact.

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

CONTRACTOR CERTIFIES AND AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Official, legal name of Contractor or individual (Type or Print) offering the proposal

Print Name: _____ Title: _____

Signed by: _____ Date: _____

CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

TO BE COMPLETED BY EACH SUBCONTRACTOR (NOT THE PRIME CONTRACTOR)

Subcontractor certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
5. The award of this Agreement is subject to a financial assistance contract between the NCTD and the U.S. Department of Transportation. Any name appearing on the Comptroller General's list of ineligible Contractor for federally financed or assisted contracts is not eligible for this contract.
6. The Subcontractor hereby certifies that neither it nor any of its officers or holders of a controlling interest are on the U.S. Comptroller General's list of ineligible Contractors for federally funded and assisted contracts. In the event any of the above persons or parties becomes included on such a list during the performance of this project, NCTD shall be promptly informed of this fact.

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

THE SUBCONTRACTOR CERTIFIES AND AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Official, legal name of Subcontractor or individual (Type or Print) offering the proposal

Print Name: _____ Title: _____

Signed by: _____ Date: _____

PUBLIC RECORDS ACT INDEMNIFICATION CERTIFICATE

The Proposer certifies that:

It will indemnify and defend NCTD in the event NCTD withholds production of any records submitted in response to this IFB that are marked "Confidential", "Trade Secret", "Proprietary", or similar designations, in response to a Public Records Act request pursuant to California Government Code section 6250 or a Freedom of Information Act request

Official, legal name of proposing Contractor or individual (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

EEO CERTIFICATE

The Contractor hereby certifies that its company has _____ **OR** has not _____ been found, adjudicated, or determined to have violated any laws of Executive Orders relating to employment discrimination or affirmative action including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d); Executive Order 10925, 11114, or 11246; or the California Fair Employment and Housing Act (Government Code 12460 et seq.); by any Federal or California court or agency, including but not limited to the Equal Employment Opportunity Commission, the Office of Federal Contract compliance Programs, and the California Fair Employment and Housing Commission.

If yes, please explain the circumstance.

Official, legal name of Contractor or individual (Type or Print) offering the proposal

Print Name: _____ Title: _____

Signed by: _____ Date: _____

FALSE CLAIMS CERTIFICATION

PROPOSER'S CERTIFICATION OF COMPLIANCE

WITH

LAWS RELATING TO

FALSE CLAIMS

I hereby certify that if awarded the Agreement of which this certificate shall be made a part of, Contractor will not violate any provisions of the False Claims Act or any other applicable federal or state laws and regulations relating to the filing of false claims against a public agency, including laws and regulations hereinafter enacted. I additionally certify that in the event it is determined that Contractor has violated the False Claims Act that such violation shall be grounds for, among other things, debarment pursuant to the policies established by Federal, State, or local law.

Official, legal name of proposing Contractor or individual (Type or Print)

Print Name: _____ Title: _____

Signed by: _____ Date: _____

DISADVANTAGED BUSINESS ENTERPRISE (DBE)/ SMALL BUSINESS (SB)

PROGRAM INFORMATION

(TO BE COMPLETED BY THE PRIME CONTRACTOR)

This form must be completed by the Contractor submitting the proposal and for each subcontractor listed in the "List of Subcontractors" Form. **FAILURE TO SUBMIT A COMPLETED FORM FOR THE PRIME AND ALL SUBCONTRACTORS MAY RESULT IN A NON-RESPONSIVE DETERMINATION.**

Regardless of your DBE status, Section "A" must be completed, and the form signed and provided with your bid/proposal:

A. Please provide the following information:

1. Name of Contractor: _____
2. Address: _____
3. Contact Name: _____
4. Phone:_____ Fax:_____ E-mail:_____
5. Type of Work Performed (list NAICS Codes if known): _____

6. Date business started (formed, incorporated, began operations, etc.): _____(MM/DD/YY)

7. Contractor's gross receipts for last year* (check one):

- Less than \$1,000,000 \$1,000,001 - \$5,000,000 \$5,000,001 - \$10,000,000
 \$10,000,001 - \$15,000,000 \$15,000,001 - \$23,980,000 \$23,980,001 - \$50,000,000
 \$23,980,001 - \$50,000,000 \$50,000,001 - \$100,000,000 More than \$100,000,000

* The Department of Transportation annually decides the amount of average annual gross receipts a firm must have to be eligible to become a DBE. Currently, if your company in the previous three fiscal years has had average annual gross receipts below \$23,980,000, your company may be eligible for DBE Certification.

8. Is your company a certified Disadvantaged Business Enterprise (DBE) and/or Small Business (SB)? Yes No
 - a. If yes, check the applicable box and state the corresponding certification number:
 DBE _____ SB _____
9. Do you want NCTD to provide your company with additional guidance on how to become DBE or SB certified? Yes No

B. If you selected your business is a DBE and/or SB above, please attach the applicable certification to this page.

NCTD accepts certification from only the agencies listed at:

<https://dot.ca.gov/-/media/dot-media/programs/civil-rights/documents/dbe/cucp-roster-of-certifying-agencies-1-2021-a11y.pdf>

Caltrans Certified DBE Contractors can be found at the following website:

<https://californiaucp.dbesystem.com/>

Certified California Dept. of General Services Small Business can be found at the following website:

<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

Name: _____
Title: _____
Signature: _____
Date: _____

DISADVANTAGED BUSINESS ENTERPRISE (DBE)/ SMALL BUSINESS (SB)

PROGRAM INFORMATION

(TO BE COMPLETED BY THE SUBCONTRACTOR)

This form must be completed by the Contractor submitting the proposal and for each subcontractor listed in the "List of Subcontractors" Form. **FAILURE TO SUBMIT A COMPLETED FORM FOR THE PRIME AND ALL SUBCONTRACTORS MAY RESULT IN A NON-RESPONSIVE DETERMINATION.**

Regardless of your DBE status, Section "A" must be completed, and the form signed and provided with your bid/proposal:

A. Please provide the following information:

1. Name of Subcontractor: _____
2. Address: _____
3. Contact Name: _____
4. Phone: _____ Fax: _____ E-mail: _____
5. Type of Work Performed (list NAICS Codes if known): _____

6. Date business started (formed, incorporated, began operations, etc.): _____ (MM/DD/YY)
7. Contractor's gross receipts for last year* (check one):
 Less than \$1,000,000 \$1,000,001 - \$5,000,000 \$5,000,001 - \$10,000,000
 \$10,000,001 - \$15,000,000 \$15,000,001 - \$23,980,000 \$23,980,001 - \$50,000,000
 \$23,980,001 - \$50,000,000 \$50,000,001 - \$100,000,000 More than \$100,000,000
- * The Department of Transportation annually decides the amount of average annual gross receipts a firm must have to be eligible to become a DBE. Currently, if your company in the previous three fiscal years has had average annual gross receipts below \$23,980,000, your company may be eligible for DBE Certification.
8. Is your company a certified Disadvantaged Business Enterprise (DBE) and/or Small Business (SB)? Yes No
 - a. If yes, check the applicable box and state the corresponding certification number:
 DBE _____ SB _____ N/A
9. Do you want NCTD to provide your company with additional guidance on how to become DBE or SB certified? Yes No

B. If you selected your business is a DBE and/or SB above, please attach the applicable certification to this page.

NCTD accepts certification from only the agencies listed at:

<https://dot.ca.gov/-/media/dot-media/programs/civil-rights/documents/dbe/cucp-roster-of-certifying-agencies-1-2021-a11y.pdf>

Caltrans Certified DBE Contractors can be found at the following website:

<https://californiaucp.dbesystem.com/>

Certified California Dept. of General Services Small Business can be found at the following website:

<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

Name: _____
Title: _____
Signature: _____
Date: _____

REFERENCE CHECK FORM – THREE (3) REFERENCES REQUIRED

RFP # _____

Name of Proposer (Contractor) being provided a reference:

Note: To be completed and signed by the person providing the reference.

CLIENT/CONTACT INFORMATION:

NAME OF COMPANY PROVIDING A REFERENCE: _____

REFERENCE'S ADDRESS: _____

CONTACT NAME AND TITLE: _____

PHONE NUMBER: _____ EMAIL: _____

1. Quality of Contractor's work concerning no more than two (2) project examples:

2. Degree of Contractor's cooperation with team (internal and external)

3. Project and deliverables on time and within Budget?

4. If change orders or amendments were issued on the projects above, what percent of work constituted the amendments or change orders?

5. Were there any problems or delays with the projects that were influenced by the Contractor? If so, please provide examples.

6. Overall rating – "1 through 10 with 10 being the highest rating" with rationale as to rating

7. Would you work with Contractor again? Yes/ No – rationale as to why

Please place a signature below. **PLEASE DO NOT TYPE SIGNATURE.**

Signed: _____ Date: _____

Title: _____

NON-COLLUSION DECLARATION

The undersigned hereby declares:

I am the _____ of _____ (“Contractor”), the party making the foregoing proposal.

The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The proposal is genuine and not collusive or sham. The Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal. The Proposer has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham proposal, or to refrain from proposing. The Proposer has not in any manner, directly or indirectly, sought by Agreement, communication, or conference with anyone to fix the proposal price of the Proposer or any other Proposer, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Proposer. All statements contained in the proposal are true. The Proposer has not, directly or indirectly, submitted its proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that they have full power to execute, and does execute, this declaration on behalf of the Proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

Official, legal name of Contractor or individual (Type or Print) offering the proposal

Print Name: _____ Title: _____

Signed by: _____ Date: _____

**IRAN CONTRACTING ACT CERTIFICATION
(Public Contract Code Section 2200 et seq.)**

As required by California Public Contract Code Section 2204, the Contractor certifies subject to penalty for perjury that the option checked below relating to the Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 et seq.) is true and correct:

The Contractor is not:

- (i) Identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
- (ii) A financial institution that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.

NCTD has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, NCTD will be unable to obtain the goods and/or services to be provided pursuant to the Contract.

The amount of the Agreement payable to the Contractor for the Project does not exceed \$1,000,000.

Official, legal name of Contractor or individual (Type or Print) offering the proposal

Print Name: _____ Title: _____

Signed by: _____ Date: _____

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of \$250,000 or twice the Agreement amount, termination of the Agreement and/or ineligibility to bid or propose on contracts for three years.

PRICE PROPOSAL FORM

Include a complete hourly rate for all CONTRACTOR staff of subcontractor(s) staff identified and listed below. Auditable hourly rates for each named individual CONSULTANT or subcontractor(s) are to be fully burdened to include all costs and profit. Services performed under the Scope of Work on a time and material basis will be priced at the identified hourly rates subject to an approved Task Order Agreement. These rates will be used to establish the maximum not-to-exceed amount of each Task Order issued under this Agreement. **Please use whole numbers.**

Time for travel will not be reimbursed.

CONSULTANTS NAME:				
DETAILED DESCRIPTION OF COST ELEMENTS				
BASE YEARS ONE THROUGH THREE- RATES SHALL BE FIXED FOR ALL THREE YEARS				
Direct Labor Title	Rate per Hour	Overhead	Profit	Fully Burdened Hourly Rate *
Project Manager				
Marketing and Communications Consultant				
Audio Visual Consultant				
Special Events Consultant				
OPTION YEAR 1				
Project Manager				
Marketing and Communications Consultant				
Audio Visual Consultant				
Special Events Consultant				
OPTION YEAR 2				
Project Manager				
Marketing and Communications Consultant				
Audio Visual Consultant				
Special Events Consultant				

*Rate per hour + Overhead + Profit

Official, legal name of proposing Contractor or individual (Type or Print):

Print Name: _____ Title: _____

Signed by: _____ Date: _____

NOTICE REGARDING DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS AND INSTRUCTIONS

NCTD has established a DBE goal for this Agreement of 0%. **OR**
NCTD may establish a DBE goal, when applicable, prior to seeking proposals for specific Task Orders.

I. DBE PARTICIPATION GENERAL INFORMATION

In conformance with 49 CFR 26, NCTD is required to implement a minority-conscious component for its DBE program. The minority-conscious goal established by NCTD for the Agreement, or if applicable, each contract Task Order, will be based on an analysis of available subcontracting opportunities and the availability of DBEs within the NCTD market area. In the event of any conflicts or inconsistencies between the CFR and the NCTD DBE Program with respect to DOT-assisted contracts, the CFR shall prevail. It is NCTD policy to provide disadvantaged, minority, and women-owned business enterprises, as defined in 49 CFR 26, an equitable opportunity to participate in all contracting opportunities. NCTD has entered into agreements with FTA, FHWA, and FRA regarding its DBE programs, which include minority and women-owned business enterprises. NCTD is required to administer contracts, contractor selection, and all related procurement activities without regard to race, color, religion, disability, political beliefs, age, national origin, gender, sexual orientation, veteran status, or cultural background. Accordingly, no firm or individual shall be denied the opportunity to compete for NCTD contracts by reasons so stated or implied. DBEs and other small businesses are strongly encouraged to participate in the performance of agreements financed in whole or in part with federal funds (See 49 CFR 26, "Participation by DBEs in DOT Financial Assistance Programs").

Contractor should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this Agreement and should take all necessary and reasonable steps for this assurance.

Contractor is encouraged to use services offered by financial institutions owned and controlled by DBEs. For more information, including a list of Minority Owned Banks, visit the United States Department of Treasury's Financial Management Service's website at www.fms.treas.gov/mbdp/index.html. Please be advised that the utilization of Minority Owned Banks is encouraged but will not be counted as participation toward achievement of a DBE goal.

The Agreement is subject to 49 CFR 26.13(b) which states:

"The contractor [Contractor], subrecipient, or subcontractor 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 26 in the award and administration of DOT-assisted contracts. Failure by the contractor [Contractor or subcontractor] to carry out these requirements is a material breach of this contract [Agreement], which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- Withholding monthly progress payments
- Assessing sanctions
- Liquidated damages
- Disqualifying the contractor from future bidding as non-responsible."

Information regarding the NCTD DBE can be found at: [Doing Business With NCTD | NCTD - North County Transit District \(gonctd.com\)](http://gonctd.com)

A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP). Please note that DBE goals must be met using firms certified as DBE by the state of California. SBE, Women-Owned Business Enterprise, Veteran-owned, and Minority Business Enterprise certifications are not equivalent to DBE certification.

A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.

REV 12/23/2022

Unless Contractor has entered into a joint venture with a DBE, Contractor will be required to document at least one of the following:

- Contractor is a DBE and will meet the DBE goal by performing work with its own forces.
- Contractor will meet the goal through work performed by DBE subcontractors, suppliers, or trucking companies.
- Contractor made adequate Good Faith Efforts (GFE) to meet the goal.

A DBE joint venture partner must be responsible for specific items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. A DBE joint venture partner must share in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.

A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.

Contractor shall list only one subcontractor for each category of work described in its proposal or bid. All DBE subcontractors should be listed in the Price Proposal or bid and list of subcontractors (Subcontractor List). If Contractor is a certified DBE and is eligible to claim all of the work in the Agreement or an applicable Task Order, its participation will count as DBE participation except that portion of the work to be performed by non-DBE subcontractors. Contractor shall include in each subcontract the Contractor signs with a subcontractor, language providing for the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.

NCTD reserves the right to withhold payment to the Contractor in an amount up to \$10,000 in order to enforce the DBE provisions of the Agreement or to use other remedies described in this Agreement. NCTD is not obligated, however, to make such a deduction or to provide notice thereof. Payment of any withheld funds shall not be made on the Agreement, or if applicable, Task Order, until such time as Contractor submits sufficient documentation demonstrating achievement of the commitment or until such time as the commitment is modified or waived by NCTD or a sanction amount is agreed to by the parties. Contractor shall include the provisions in this subsection in each subcontract it signs with a subcontractor.

NCTD also may conduct post-award monitoring of Contractor's compliance with the DBE provisions of the Agreement. For example, NCTD may ask to review Contractor's subcontracts to ensure that DBEs have done the work for which credit was claimed. Contractor shall cooperate with NCTD requests for assistance with post-award monitoring. Failure by the Contractor to cooperate may be considered a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as NCTD deems appropriate.

Failure to meet a DBE Commitment due to unilateral decisions by Contractor will be considered a material breach of contract. Contractor must communicate with NCTD promptly if it believes changes in work approved by NCTD merit modification of the commitment. Contractor shall notify the NCTD Project Manager in Contractor's monthly project status reports of any anticipated problems with Contractor meeting its commitment.

II. RESOURCES

NCTD participates as a Non-Certifying Member in the CUCP. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification at (916) 324-1700 for assistance.

Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <https://dot.ca.gov/programs/civil-rights/dbe-search>

- Click on Access the DBE Query Form
- Click on Start DBE Firms Query

- Searches can be performed by one or more criteria
- Follow instructions on the screen

III. DBE DIRECTORY

If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the online database. A copy of the directory of certified DBEs may be ordered by calling (916) 263-0822 or by writing to:

California Department of Transportation
Publication Distribution Unit
1900 Royal Oaks Drive
Sacramento, CA 95815-3800

IV. DBE CREDITING PROVISIONS

Materials or supplies purchased from DBE count towards DBE credit under the following conditions:

- If the materials or supplies are obtained from a DBE Manufacturer, count 100 percent of the cost of the materials or supplies. A DBE Manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- If the materials or supplies purchased from a DBE Regular Dealer, count 60 percent of the cost of the materials or supplies. A DBE Regular Dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, or if applicable, Task Order, are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating or maintaining a place of business provided in this section.
- If a dealer both owns and operates distribution equipment needed for the Work, any supplementing of Regular Dealers' own distribution equipment shall be, by a long-term lease agreement and not on an ad hoc or agreement-by-agreement basis. Packagers, brokers, Manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE Regular Dealers within the meaning of this section.
- Materials or supplies purchased from a DBE, which is neither a Manufacturer nor a Regular Dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required for the Work, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

For DBE trucking companies: credit for DBE will count towards DBE credit under the following conditions:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible under the Agreement, or if applicable, Task Order, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement.
- The DBE receives credit for the total value of the transportation services it provides on the Agreement, or if applicable, Task Order, using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. A DBE who leases trucks from another DBE receives credit for the total value

of the transportation services the lessee DBE provides on the Agreement, or if applicable, Task Order.

- The DBE may also lease trucks from a non-DBE firm, including an owner-operator. A DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. A DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE. If Contractor chooses this approach to meet a NCTD goal, it must notify NCTD in advance and obtain concurrence from NCTD since NCTD will be required to obtain written consent from the appropriate DOT operating administration.
- For the purposes of this Section, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

V. DBE CERTIFICATION

NCTD will accept DBE certification from the certifying member agencies, which certify eligibility of DBEs in accordance with 49 CFR 26, under the CUCP or another state's certification program pursuant to the interstate certification process described in 49 CFR 26.85. Listings of certifying member agencies are available in the Caltrans Office of Civil Rights website at: <https://dot.ca.gov/programs/civil-rights/dbe-search>. A firm that is certified DBE by another state at the time of proposal submission, must be certified as DBE by the state of California by the time of execution of the Agreement, or if applicable, Task Order.

The CUCP database includes the DBEs certified from all certifying agencies participating in the CUCP. If Contractor is looking for a certified DBE firm or wants to be sure the firm it plans to subcontract with is certified, Contractor may perform a query in the CUCP database by going to: <https://dot.ca.gov/programs/civil-rights/dbe-search>. If Contractor believes a firm is certified that cannot be located on the database, it may contact the Caltrans Office of Civil Rights Certification Unit at (916) 324-1700 for assistance.

If a DBE subcontractor is decertified during the term of the Agreement, or if applicable, Task Order, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the term of the Agreement, the subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to NCTD. A DBE Certification Status Change Form indicating the DBE's existing certification status, shall be signed and certified correct by Contractor and shall be furnished to NCTD within 90 days from the change in certification status.

VI. COMMERCIALLY USEFUL FUNCTION STANDARDS

To be credited, a DBE must perform a commercially useful function in and be utilized for work in the North American Industry Classification System (NAICS) code for which they are CUCP certified. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the Agreement, or if applicable, Task Order, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, NCTD will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement, or if applicable, Task Order, is commensurate with the work it is actually performed and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, NCTD must examine similar transactions, particularly those in which DBEs do not participate. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE

subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, NCTD will presume that it is not performing a commercially useful function. When a DBE is presumed not to be performing a commercially useful function as provided in the previous paragraph, the DBE may present evidence to rebut this presumption. NCTD may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

VII. DBE “FRONTS” AND FRAUDS

Only legitimate DBEs are eligible to participate in any federally funded contract. Therefore, Contractor is cautioned against knowingly and willingly using “fronts” or doing business with DBEs in a manner, which could compromise the DBE’s continued eligibility and DBE participation credit. The use of “fronts” and “pass through” subcontracts to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse, or mismanagement of federal funds should be immediately reported to the Office of Inspector General, United States DOT toll free hotline at (800) 424-9071.

VIII. SUBSTITUTION

DBEs must perform work or supply materials as listed in the Proposer DBE Commitment form and as shown in the Exhibit entitled “Contractor Contract DBE Commitment Information”. Contractor shall not terminate a DBE listed subcontractor for convenience and perform the work with its own forces or obtain materials from other sources without prior written authorization from NCTD.

NCTD will grant authorization to substitute other forces or sources of materials if Contractor submits a request to NCTD that establishes any of the following justifications:

- Listed DBE fails or refuses to execute a written contract based on plans and specifications for the Work.
- Contractor stipulates that a bond is a condition of executing the subcontract and the listed DBE fails to meet the bond requirements.
- Work requires a license and listed DBE does not have a valid license.
- Listed DBE fails or refuses to perform the work or furnish the listed materials.
- Listed DBE's work is unsatisfactory and not in compliance with its contract.
- Listed DBE delays or disrupts the progress of the work.
- Listed DBE becomes bankrupt or insolvent.

Contractor will need to follow the procedures below to substitute DBE subcontractors so that the DBE commitment can be met.

Before requesting permission from NCTD for a substitution, Contractor must give notice in writing to the DBE subcontractor, with a copy to the NCTD Disadvantaged Business Enterprise Liaison Officer (DBELO), of its intent to request to terminate and/or substitute the DBE subcontractor. The notice sent to the DBE subcontractor must include the reason the Contractor is requesting the substitution.

Contractor must give the DBE subcontractor five days to respond to Contractor’s notice. The DBE’s response should advise the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract. The response should include information regarding why the substitution should not be approved. Contractor shall provide the NCTD DBELO with a copy of the DBE subcontractor’s response, if any, when submitting its request for substitution.

The proposed new subcontractor must be certified to perform a commercially useful function for one or more of the types of work in the scope of work. NCTD can assist with locating DBE firms.

Contractor must check the CUCP database to ensure the proposed firm is DBE certified for the associated categories and types of work (identified by the NAICS codes) in the scope of work. If, even after seeking assistance from NCTD in locating DBE firms, Contractor cannot locate DBE firms that are ready, willing and able to do the work, Contractor shall provide NCTD or its designee with GFE documentation regarding its efforts for the NCTD contract file that will justify waiver of all or a portion of the DBE goal/commitment. NCTD or a designee will review and determine if Contractor’s submitted GFE

documentation is adequate. Contractor shall provide NCTD with the qualifications and fee information that was used for selection.

IX. DBE REPORTING

If Contractor or any of its subcontractors, suppliers, or trucking companies are DBE-certified, Contractor must either have completed a DBE Commitment Form and submitted it with its proposal or bid, or if this Agreement is awarded without a competitive procurement, Contractor must execute the DBE Commitment Form at the time it executes the Agreement. Contractor shall report subcontractor payment details for any DBE subcontractor or supplier to NCTD using PlanetBids by the 15th of each month. Subcontractors with lower tier DBE subcontractors shall report payment details to NCTD using PlanetBids within 15 days from the date payment is received from Contractor or higher tier subcontractor. Contractor is responsible for ensuring subcontractors are verifying payments through PlanetBids on a timely basis and shall promptly notify delinquent subcontractors to verify payments. In addition, Contractor shall be required to submit a document entitled "Final Utilization Report" ("the FUR") within 90 days after the date all Work is completed.

DBE COMMITMENT FORM

Used to show commitment at time of Agreement, or if applicable, Task Order, execution. All information on this form must be typed, excluding signatures.

1. Local Agency: NCTD 2. Agreement or Task Order DBE Goal %: _____
 3. Project Description: _____
 4. Project Location: _____
 5. Contractor's Name: _____ 6. Prime is Certified DBE: 7. Total Award Amount: _____
 8. Total Dollar Amount for ALL Subcontractors: _____ 9. Total Number of ALL Subcontractors: _____

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
<p>NCTD to Complete this Section 20. NCTD Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____ NCTD certifies that all DBE certifications are valid and information on this form is complete and accurate. 23. NCTD Representative's Signature _____ 24. Date _____ 25. NCTD Representative's Name _____ 26. Phone _____ 27. NCTD Representative's Title _____</p>		<p>14. TOTAL DOLLAR AMOUNT OF CLAIMED DBE PARTICIPATION \$ _____ 15. TOTAL PERCENT OF CLAIMED DBE PARTICIPATION ON AGREEMENT % _____ IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. 15. Preparer's Signature _____ 16. Date _____ 17. Preparer's Name _____ 18. Phone _____ 19. Preparer's Title _____</p>	<p> </p>

**INSTRUCTIONS – DBE COMMITMENT FORM
CONTRACTOR SECTION**

1. Local Agency – NCTD name entered as agency that is funding the Agreement or Task Order.
2. Contract DBE Goal - Enter the contract or Task Order DBE goal percentage set by NCTD.
3. Project Description - Enter the project description.
4. Project Location - Enter the project location.
5. Contractor's Name - Enter the Contractor's firm name.
6. Prime Certified DBE - Check box if prime Contractor is a certified DBE.
7. Total Contract Award Amount - Enter the total Agreement or Task Order award dollar amount for the prime Contractor.
8. Total Dollar Amount for ALL Subcontractors – Enter the total dollar amount for all subcontracted Contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime Contractor information in this count.
9. Total number of ALL subcontractors – Enter the total number of all subcontracted Contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime Contractor information in this count.
10. Description of Work, Services, or Materials Supplied - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime Contractor's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE.
11. DBE Certification Number - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date proposals are due to NCTD.
12. DBE Contact Information - Enter the name, address, and phone number of all DBE subcontracted Contractors. Also, enter the prime Contractor's name and phone number, if the prime is a DBE.
13. DBE Dollar Amount - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime Contractor if the prime is a DBE.
14. Total Claimed DBE Participation - \$: Enter the total dollar amounts entered in the "DBE Dollar Amount" column. %: Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than the Contract/Task Order DBE Goal, an adequately documented Good Faith Effort (GFE) is required.
15. Preparer's Signature - The person completing the DBE commitment form on behalf of the Contractor's firm must sign their name.
16. Date - Enter the date the DBE commitment form is signed by the Contractor's preparer.
17. Preparer's Name - Enter the name of the person preparing and signing the Contractor's DBE commitment form.
18. Phone - Enter the area code and phone number of the person signing the Contractor's DBE commitment form.
19. Preparer's Title - Enter the position/title of the person signing the Contractor's DBE commitment form.

NCTD SECTION

20. NCTD Contract Number - Enter the NCTD contract and/or Task Order number.
21. Federal-Aid Project Number - Enter the Federal-Aid Project Number.
22. Contract Execution Date - Enter the date the Agreement was executed.
23. NCTD Representative's Signature - The person completing this section of the form for NCTD must sign their name to certify that the information in this and the Contractor Section of this form is complete and accurate.
24. Date - Enter the date the form is signed by the NCTD Representative.
25. NCTD Representative's Name - Enter the name of the NCTD Representative certifying the Contractor's DBE commitment form.
26. Phone - Enter the area code and phone number of the person signing the Contractor's DBE commitment form.
27. NCTD Representative Title - Enter the position/title of the NCTD Representative certifying the Contractor's DBE Commitment form.

SAMPLE AGREEMENT



**SERVICES AGREEMENT
BETWEEN
NORTH COUNTY TRANSIT DISTRICT
AND
CONTRACTOR NAME
AGREEMENT NUMBER:**

This Agreement ("Agreement") is made and entered into by and among the North County Transit District ("NCTD"), operating pursuant to Public Utilities Code sections §125000, et. seq. and _____ ("Contractor"). Both NCTD and Contractor are collectively referred to as "Parties".

RECITALS

1. NCTD is in need of an On-Call Marketing and Communications Consultant ("Work").
2. Contractor represents it is duly-licensed and has the necessary experience and qualifications to provide the Work.
3. Parties' desire by this Agreement to establish the terms for NCTD to retain Contractor to provide the Work described herein.
4. This is an Agreement under which Work will be awarded on an "as-needed" or "on-call" basis, there is no commitment under the Agreement for NCTD to provide enough Work to keep Contractor's personnel working on a full-time basis. The not-to-exceed value of the Agreement is not a commitment of the value of Work to be assigned to Contractor.

AGREEMENT

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Order of Precedence

This Agreement incorporates, by reference, the below documents in their entirety. All such documents are Exhibits to this Agreement. In addition, in the event of inconsistency or ambiguity in this Agreement, the following order of precedence shall apply:

- a. This Agreement with its attachments
- b. Conformed Request for Proposal (RFP) No. 32557
- c. A Task Order Agreement issued under the Agreement
- d. Best and Final Offer (BAFO) (*optional*)
- e. Contractor's proposal dated Month DD, 20YY

2. Services

Contractor shall provide NCTD with the Work described in the conformed Scope of Work attached to this Agreement.

Contractor agrees to provide services to NCTD in accordance with the terms and conditions of this Agreement, and to exercise the degree of professional care, skill, efficiency and judgment ordinarily employed by Contractor with expertise in the fields of service covered by the Scope of Work. Contractor represents that it has in effect all licenses, registrations, certifications, and insurance policies in good standing that are required under applicable law and this Agreement to perform the Work, and agrees

to retain such licenses, registrations, certifications, and insurance policies in active status throughout the duration of this Agreement.

Contractor shall ensure that it provides adequate controls with regard to the quality of its deliverables. Written deliverables will typically be provided to NCTD in draft for review. If NCTD must make multiple rounds of revisions to Contractor's deliverables due to failure of Contractor to provide adequate quality control, NCTD shall not be required to pay Contractor for time spent by Contractor to correct its deliverables.

NCTD review, approval, acceptance of, or payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance thereof; and Contractor shall be, and remain liable to, Contractor in accordance with applicable law for all damages to NCTD by Contractor's errors or omissions deemed to be negligent performance of any of the services furnished under this Agreement.

3. Subcontractors and Key Personnel

All persons and entities authorized by Contractor to provide goods or services under this Agreement shall be referred to herein as "subcontractors." When subcontracting on a NCTD project, Contractor shall provide a copy of this Agreement to its subcontractors and inform them of its applicability to their subcontracts. All services and goods under this Agreement shall be provided by Contractor or subcontractors identified in Contractor's proposal or the Agreement. Information regarding each subcontractor shall be added to PlanetBids, NCTD's vendor management system.

Contractor must obtain **prior** approval from NCTD to add any subcontractors during the term of the Agreement. NCTD may need to verify licensure, debarment status, pay rates, and other matters before the subcontractor can provide goods or services. In addition, the Contractor must promptly add such additional subcontractors to PlanetBids so that NCTD may track promptness of payments and usage of Disadvantaged Business Enterprises and Small Businesses (DBE/SB). Contractor shall assist NCTD in tracking use of DBE and SB firms, whether or not federal funding is used by providing documentation and data as requested by NCTD.

If Contractor subcontracts any of the work to be performed under this Agreement, Contractor shall be as fully responsible to NCTD for the acts, errors, or omissions of Contractor's subcontractor and of the persons employed by the subcontractor as Contractor is for the acts and omissions of persons directly employed by Contractor. NCTD reserves the right to approve the use of any subcontractor and the Contractor must make a request in writing to use a subcontractor not already named in the Agreement. Contractor shall provide a copy of any subcontract related to this Agreement within ten calendar days of a request from NCTD. All subcontracts involving the Work shall pass through all applicable provisions in this Agreement, including but not limited to federal provisions and prevailing wage requirements that may be provided herein.

The Contractor shall identify key personnel assigned to be assigned Work under the Agreement. Such key personnel shall not be replaced or removed without approval by NCTD. Key personnel shall be identified for not only the Contractor but also all subcontractors. Addition of personnel or subcontractors shall only be permitted with advance approval from NCTD in accordance with the process described in the Agreement.

4. Time of Performance

The Agreement will remain valid from for three (3) year base term beginning September 21, 2023 and ending no later than September 20, 2026 with the option to extend the Agreement for two (2) one (1) year options.

As time is of the essence, Contractor shall perform its services hereunder in a prompt and timely manner and in accordance with the project schedule as set forth in the Scope of Work, the RFP, and the Contractor's proposal, which may be conformed in the Agreement following negotiations. In the event of a conflict between those documents regarding the project schedule or payments, the Order of Precedence shall apply.

Force Majeure: Neither NCTD nor Contractor shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but shall not be limited to, abnormal weather conditions, floods, earthquakes, fire, epidemics, war, riots and other civil disturbances, strikes, lockouts, work slowdowns, and other labor disturbances, sabotage or judicial restraint. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of the Agreement. Parties hereby agree to inform each other of any force majeure event within ten (10) calendar days of the party's knowledge of the event. Should a force majeure event occur that renders it impossible for either party to perform its obligations hereunder for a period of forty-five (45) or more consecutive days, the Parties agree to negotiate in good faith to amend the Agreement as may be necessary.

Contractor shall monitor the termination date of the Agreement any any issued Task Orders and notify the NCTD Project Manager at least 60 days prior to the termination date if Contractor believes Contractor's work under the Agreement or Task Order will extend beyond the termination date and necessitates an amendment.

5. Compensation

- a. The minimum Agreement value is \$1,000.00 U.S. dollars. The maximum Agreement value shall not exceed One Million Three Hundred Ninety-Six Thousand Dollars (\$1,396,000.00) and the actual Agreement value is the aggregate value of all Task Order Agreements and amendments issued under this Agreement.

Increases that could cause the maximum compensation amount of the Agreement or a Task Order to increase must be documented in a written amendment to the Agreement or Task Order. Should Contractor believe an increase to the maximum compensation amount is warranted and not due to events that were foreseeable or within Contractor's control, Contractor must request that an amendment be made PRIOR to incurring any additional costs.

- b. Method of Payment:

The method of payment is to be reflective of the firm-fixed fees agreed to during negotiations, which includes total compensation for all direct and indirect costs, overhead, fringe benefits, fees, delivery charges, fuel or other surcharges, taxes, and profit. The payment schedule in the proposal, BAFO, or attached to the Agreement (whichever takes precedence) shall break out payment amounts by milestone or deliverable with not-to-exceed (NTE) amounts for each, and Contractor shall obtain prior written approval for a revision to the payment schedule from the Project Manager before exceeding the payment line item amount shown. Progress payments will be made in arrears, as specified in the payment schedule and based on services provided and actual costs incurred. All direct costs for materials, supplies, goods, or other items that may be agreed to by the Parties shall be invoiced to NCTD without markup and with the benefit of any discounts provided to Contractor by a subcontractor or supplier. Contractor shall attach copies of original invoices or receipts for direct costs to its invoices to NCTD. NCTD is not exempt from sales and use tax.

- c. Travel Reimbursement: NOT APPLICABLE
- d. Cost Principles and Procedures: The Contractor agrees that 2 CFR 200 et seq. shall be used to determine whether individual items of cost are allowable.
- e. If Contractor or a subcontractor uses staff that are on the payroll of a temporary agency, whether such staff are treated as temporary employees or subcontractors, NCTD shall not be charged more

than the amount invoiced by the temporary firm or subcontractor unless the arrangement is fully disclosed to NCTD and expressly agreed to in this Agreement or an executed amendment.

6. Invoicing

- a. Contractor shall be paid for services once rendered. **Advance payments are prohibited.**
- b. Fixed Fee Payments Based on Milestones or Deliverables: NCTD shall make payment to the Contractor within thirty (30) days from the date of the invoice and after confirmation of services performed or milestones achieved. If payments to Contractor will be based on deliverables and other Work completed, invoices must contain a progress report showing milestones complete against the payment schedule. If the Contractor fails to submit a deliverable required by the Agreement, payment shall not be made until the deliverable is received. Partial payments for incomplete deliverables shall not be permitted. If the Contractor fails to satisfactorily complete each of the milestones of the Agreement, no further progress payment will be made until the milestone has been satisfactorily achieved.
- c. Invoicing shall not be submitted more often than monthly. The Contractor shall submit an account statement with the invoice(s) on the 1st of every month. The format of the invoice to be submitted is subject to change based on the discretion of NCTD. Invoices may be mailed or delivered to 810 Mission Avenue, Oceanside, CA 92054, Attn: Accounts Payable or emailed to apclerks@nctd.org. Only one method of delivery may be used for the life of the Agreement. Contractor is to submit invoices in a form that clearly identifies the date that the Work was completed, a brief description of the Work performed, and the amount due. Contractor is to submit back-up documentation to support authorized expenses and direct costs such as equipment and travel. These items, if applicable, must be attached to each invoice. All invoices must reference the Agreement number and, if applicable, the Task Order number that authorized Work. No payment will be made for any Work performed outside of the performance period of the Agreement as may be supplemented by amendment.
- d. NCTD requires timely invoicing in order to accurately track the rate funds are being used on a project and to ensure expenses incurred in a particular fiscal year come from amounts budgeted for that fiscal year. Accordingly, Contractor expressly waives any right to seek otherwise allowable reimbursements or payments from NCTD pursuant to this Agreement for expenses incurred by Contractor or its subcontractors, which are not submitted to NCTD for payment either: 1) within 180 (one hundred and eighty) days after they are incurred, or 2) within 60 (sixty) days of NCTD's fiscal year end, which is June 30 of each year, whichever comes first. It is Contractor's responsibility to ensure its subcontractors and suppliers invoice Contractor within sufficient time for Contractor to meet these deadlines.

7. Prompt Payment

- a. The Contractor shall make prompt payment of all monies due and owed to DBE and non-DBE firms within 7 business days upon receipt of payment from North County Transit District (NCTD) as per Agreement. Payment of retention shall be made to all DBE and non-DBE subcontractors within 10 days after satisfactory completion of the subcontracted work. Contractor shall utilize the PlanetBids "My Contracts" portal to report monthly subcontractor payment reports during the reporting month. Contractor shall ensure that its subcontractors are added into the PlanetBids "My Contracts" portal once the Agreement has been awarded.
- b. Contractor shall submit a monthly subcontractor payment report on the PlanetBids "My Contracts" portal by the 20th of each month following the end of the reporting month and should reflect all payments made to subcontractor(s) through the last day of the previous month, even if the subcontractor(s) did not perform any work. Contractor shall ensure that its subcontractor(s) use the PlanetBids "My Contracts" portal to verify the payment amounts the Contractor submitted by the 25th of each month following the end of the reporting month.

- c. In order for the Contractor to submit a properly executed monthly subcontractor payments report, the Contractor must verify that their subcontractors' DBE certification is current at the time of payment. Certified Contractors can be found at the following State of California website: <https://dot.ca.gov/programs/civil-rights/dbe-search> . Failure to submit a proper substantiation of payment via PlanetBids will result in delayed payment. Failure to submit these reports in a timely manner may result in a penalty of \$10 per day for each payment not reported upon.

8. Title to Work Products or Goods Purchased

- a. Title to any work products or goods purchased by NCTD under this Agreement shall pass to NCTD at the time of NCTD's payment to Contractor.
- b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.
- c. The transfer of title as specified above shall not imply acceptance by NCTD, nor relieve the Contractor from the responsibility for strict compliance with the Agreement, provision of any applicable warranties, or for any loss of or damage to the Work.
- d. The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the NCTD proper bills of sale or other applicable written instruments of title in a form as required by NCTD; said instruments shall convey to the NCTD title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.
- e. Contractor shall have title to and bear the risk of any loss of or damage to Work or goods purchased hereunder until they have been delivered, unloaded, and received by NCTD at the FOB Destination specified herein. Contractor's responsibility for loss or damage, except for loss or damage resulting from Contractor's negligence, shall cease when title passes to NCTD.

9. Availability of Funding

NCTD's obligation for payment of any agreement beyond its current fiscal year (July 1 to June 30) is contingent upon the availability of funding from which payment can be made. NCTD shall, at its sole discretion, have the right to terminate or suspend this Agreement or reduce compensation and service levels or Scope of Work proportionately upon thirty (30) days' written notice to the Contractor in the event that federal, state or other funding for the Agreement ceases or is reduced prior to the ordinary completion date of the Agreement. In the event of reduction of funding for the Agreement, NCTD and Contractor shall meet within ten (10) days of written notice to renegotiate the Agreement based upon the modified level of funding. In this case, if no agreement is reached between NCTD and Contractor within ten (10) days of the first meeting, either party shall have the right to terminate the Agreement within ten (10) days written notice of termination. In the event of termination of the Agreement in accordance with the terms of this section, Contractor shall be entitled to any payment offset to which NCTD may be entitled, for damages or otherwise, under the terms of the Agreement. In the event of termination of the Agreement pursuant to this section, in no event shall Contractor be entitled to any loss of profits on the portion of the Agreement so terminated, or to other compensation, benefits, reimbursements or ancillary services other than as expressly provided herein.

10. Performance of Work Within NCTD Property

- a. The Contractor is required to have an NCTD Access Authorization on hand prior to working on any NCTD site location. The Contractor must provide work plan submittals in accordance with the Property in Access Requests Process found on the GONCTD.com website (<http://www.gonctd.com/working-around-the-rails/#submittals>).
- b. NCTD is committed to maintaining a safe and respectful environment at all its facilities and properties for the benefit of its employees, customers, business partners, and visitors. To support that goal, NCTD requires that the Contractor adhere to reasonable standards of conduct while working on or in NCTD facilities and property. Additionally, use of any NCTD systems, tools, or physical assets must likewise be in accordance with established requirements. Specific areas of compliance include but are not limited to:

- i. NCTD Identification Badges – For safety and security purposes the Contractor must comply with NCTD requirements regarding utilization of Identification Badges while on/in NCTD properties/facilities as requested by NCTD staff.
- ii. No Discrimination/Harassment – Contractor is expected to conduct themselves in a professional, ethical, and respectful manner at all times, and refrain from any conduct or actions that could constitute harassment or discrimination towards employees, customers, business partners, visitors.
- iii. Drug/Alcohol – Contractor shall maintain compliance with NCTD’s status as a Drug Free workplace.
- iv. Electronic Systems – If Contractor will utilize NCTD electronic systems, including computers, telephones, facsimile machines, etc., shall ensure they are utilized solely for business purposes related to direct fulfillment of contracted services. Additionally, Contractor shall comply with any instructions or requirements of NCTD Information Technology staff related to use of said systems.

Based upon individual contract parameters, solely in NCTD’s determination, Contractor may be required to provide additional information to NCTD to ensure compliance with the foregoing items, and/or other reasonable business and operational needs.

11. Disadvantaged Business Enterprises (DBEs) and Nondiscrimination

- a. Whether or not a DBE goal was set for the procurement, or a DBE commitment is made for the Agreement or a Task Order, Contractor shall submit a document entitled “Final Utilization Report” (“the FUR”) within 90 days after the date all goods and services called for in the Agreement or each Task Order are completed. NCTD is required to track use of DBE firms, whether or not federal funding is used. Contractor shall comply with the exhibit to this Agreement entitled “Notice Regarding Disadvantaged Business Enterprises Requirements and Instructions.”
- b. NCTD requires Contractor to comply with Title VI and Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the California Fair Employment and Housing Act, as amended, and all other applicable non-discrimination laws. NCTD will not tolerate illegal discrimination or harassment by Contractor.
- c. NCTD, in accordance with the provisions of Title VI of the Civil Rights Act of 1964, 49 CFR Part 21, and 28 CFR section 50.3, hereby notifies Contractor that Contractor shall affirmatively ensure that for any contract entered into as a result of this Agreement, DBEs will be afforded full and fair opportunity to work on NCTD projects and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

12. Task Orders

- a. Specific projects will be assigned to Contractor through issuance of Task Orders. After a project to be performed under this Agreement is identified by NCTD, NCTD will prepare a draft Scope of Work and an independent cost estimate before seeking a proposal.
- b. Contractor’s proposal shall provide the work plan, names of employee(s) and any subcontractors whom Contractor proposes to assign to perform the Work. The proposal may include but is not limited to level of effort, job classification, fees, deliverables, calendar, etc. for the completion of the Work. All proposals shall be submitted in accordance with the previously negotiated Agreement rates and labor classifications. Contractor shall submit a proposal to NCTD within the time prescribed in the Task Order solicitation. Contractor shall not submit proposed scope or pricing for a Task Order to anyone other than the Contract Officer. Task Order negotiation of fixed fee amounts will be based on the classifications and rates in Contractor’s Price Proposal

submitted in response to the solicitation. After agreement has been reached on the negotiable items and total cost, the finalized Task Order shall be prepared by NCTD for execution.

- c. Assignment of Work to the Contractor shall be initiated via an executed Task Order Agreement (TOA) from NCTD. Proceeding with Work before receipt of an executed TOA is prohibited and shall be at the sole risk and expense of Contractor. The only exception to this advance TOA authorization requirement is in the event of an emergency or exigent circumstance and the NCTD Project Manager provides written direction to perform Work necessary to mitigate such circumstances. The Contractor must immediately notify the Contracts Officer by email, if this situation occurs.

13. Reactive Purchase Authorizations for Pre-priced Services

In addition to other Work that may be specified in the Scope of Work, Contractor shall perform as-needed services up to a Not to Exceed (NTE) amount of \$_____/year at the rates identified in the Agreement. When pre-priced services are to be assigned to Contractor under this Agreement the following method shall be followed:

- a. When NCTD identifies pre-priced services it requires from Contractor, NCTD staff will use the pre-priced rates incorporated in the Agreement and email a written order to Contractor with an NTE amount for that order. Orders will be documented within NCTD with a Reactive Purchase Authorization (RPA) process by authorized NCTD personnel. NCTD will assign an RPA order number to each request.
- b. Work authorization for pre-priced services that call for payment to Contractor for items that are not pre-priced in the Agreement shall not be permitted using the RPA process and shall require issuance of a fully executed Task Order Agreement or Agreement Amendment by NCTD.
- c. Contractor shall confirm with NCTD by email that that an order's NTE amount is acceptable and provide NCTD with information identifying any subcontractors to be used and the portion of the Work any subcontractor(s) will perform. Subcontractors must be those listed in the bid or proposal submitted in response to the RFP issued by NCTD unless changes to subcontractors listed are authorized in advance by the NCTD Contract Officer.
- d. The only personnel at NCTD with authority to authorize Contractor to commence pre-priced work are the NCTD Project Manager
- e. Records of all orders placed by NCTD shall be kept by Contractor and may be audited by NCTD.

14. Insurance

Contractor shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons, or damages to property, which may arise from, or in connection with, the performance of the Work hereunder by Contractor, its agents, representatives, or employees. Proof of insurance shall be submitted to NCTD within five (5) working days of NCTD's request and is required before the commencement of Work.

a. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VI. Carriers must be licensed to do business in California and maintain an agent for service of process within California. Exceptions may be made for insurers when not specifically rated such as the State Compensation Insurance Fund, conglomerates such as Lloyds of London, or for self-insured entities.

b. Pass-Through Costs to NCTD

To the extent Contractor elects to pass through insurance premium costs to NCTD, Contractor shall not charge NCTD for any insurance costs that are not directly attributable to the Work. Contractor shall not pass through insurance costs to NCTD that are attributable to, or overlap with, work performed for Contractor's other project or clients or are included in Contractor's overhead rate.

c. Notice of Termination, Cancellation, or Change

Should any of the insurance policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions and sent to NCTD. Contractor shall notify NCTD immediately following Contractor's first notice or awareness of any proposed or actual termination, cancellation, or change in its insurance coverage. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be amended or canceled, except after 30 days' prior written notice has been given to NCTD. Notice of cancellation sent by email to insurance@nctd.org shall be sufficient notice.

d. Failure to Provide Insurance

Failure to provide and continue in force any insurance as described in this Insurance Section shall be deemed a material breach of this Agreement, which NCTD may deem to constitute cause for immediate termination. NCTD reserves the right to withhold payments to Contractor in the event of material noncompliance with the insurance requirements outlined herein. If contractor fails to maintain the insurance as set forth herein, NCTD shall have the right, but not the obligation, to purchase said insurance at Contractor's expense and to withhold the expense of such insurance from any payments otherwise due to Contractor.

e. Certificates of Insurance and Endorsements

Contractor shall furnish NCTD with Certificates of Insurance and any required endorsements affecting coverage required by this section. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Endorsements must specifically state that they modify the policy language. All certificates and endorsements are to be received and approved by NCTD before work commences. Contractor shall ensure that the representations made on the Certificate of Insurance and Endorsements are true and correct. Complete policies of insurance shall be provided to NCTD upon request and no later than five (5) days after such request. Failure to provide NCTD a copy of the insurance policies required in this contract shall be deemed a material breach of contract, which shall be deemed at the option of NCTD to constitute a cause for immediate termination hereof. The coverage forms and related endorsements required herein required by Contractor shall conform to the Insurance Services Office (ISO) 2013 Edition (or the latest revision available).

f. Commercial General Liability and Auto Liability Endorsements

The Commercial General and Auto Liability policies shall contain, or be endorsed to contain, the following provisions:

NCTD, its directors, officers, agents and employees are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. The commercial general liability policy does not need to cover products and completed operations when services Contractor will perform on the Work are not connected to construction or maintenance.

Commercial general liability coverage shall be provided in the form of an additional insured policy endorsement to the Contractor's insurance at least as broad as ISO CG 20 10 and CG 20 37 forms, respectively.

For any claims related to this Work, the Contractor's insurance coverage shall be primary insurance as respects NCTD, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. Contractor shall provide NCTD a conforming ISO CG 20 01 Endorsement for Commercial General Liability.

Contractor agrees to waive all rights against NCTD and its directors, officers, agents and employees for recovery of damages to the extent these damages are covered by the Commercial General Liability and Auto Liability insurance required pursuant to this contract. Contractor shall provide NCTD a conforming ISO CG 24 04 Endorsement for Commercial General Liability and ISO CA 04 43 Endorsement for Auto Liability, respectively.

g. Insurance Certificate Submittals

NCTD uses PlanetBids to track and verify insurance coverage. Contractor shall include the Agreement number and/or task order number on all insurance-related correspondence submitted to PlanetBids (i.e., the insurance certificate itself).

Initial Certificate Submittal

After Contractor's receipt of the Notice of Intent to Negotiate, Contractor shall submit its certificates of insurance through the PlanetBids portal established for NCTD. NCTD will not execute the Agreement and Contractor shall not commence work unless Contractor has submitted compliant Certificates of Insurance (COIs) and endorsements have been received, and NCTD has deemed the Contractor as compliant with the insurance requirements.

Renewal Certificate Submittals

Contractor shall cause its insurance agents to comply with requests for updated information from PlanetBids on no less than an annual basis. Contractor is responsible for ensuring that its agents send NCTD updated certificates of insurance throughout the term of the Agreement via PlanetBids. NCTD reserves the right to terminate this Agreement or to withhold payments to Contractor if Contractor fails to maintain compliance with the insurance requirements of this Agreement, including providing current certificates of insurance and endorsements to PlanetBids.

h. No Limitation on Liabilities and Obligations

The requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by NCTD are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this Agreement, including, but not limited to, the provisions concerning indemnification.

The specified insurance limits are minimum amounts to be provided, and any insurance maintained by Contractor above such limits shall provide protection to NCTD and all additional insureds to the same extent as other insurance provided by Contractor.

i. Coverage for Subcontractors

Insurance required of the Contractor shall be provided by all subcontractors or by Contractor on behalf of all subcontractors to cover their services performed under this Agreement. Contractor shall not require subcontractors to maintain insurance amounts that are disproportionate to the risk

exposure, scope of work and/or dollar value of work subcontracted. Contractor shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to any subcontractor.

j. No Waiver of Requirements

Acceptance by NCTD of a certificate or endorsement that varies from the requirements in this section shall not constitute a waiver by NCTD of strict compliance with the provisions herein.

k. waiver and release of liability for auto liability and/or Workers' Compensation insurance

Notwithstanding the foregoing section, Contractor may be granted a waiver of the requirements in this section under the following conditions:

- If Contractor does not purchase Workers' Compensation insurance because it has no employees or it has fewer employees than is mandated by the Workers' Compensation statutes, regulations, and applicable to employers in the state of California, then it will be required to sign the Workers' Compensation Waiver and Release of Liability Agreement in order to be allowed to perform work or services for NCTD. The document is available from the Procurement and Contract Administration Division.
- If Contractor does not purchase Auto Liability insurance because it has no vehicles that will be used in the course of performing work pursuant to this Agreement, and its business will not utilize hired or non-owned vehicles in the course of performing work pursuant to this Agreement in the state of California, then it will be required to sign the Automobile Liability Waiver and Release of Liability Agreement in order to be allowed to perform work or services for NCTD. The document is available from the Procurement and Contract Administration Division. Until the Waiver is signed or Auto Liability insurance consistent with this Agreement is purchased and approved by NCTD, Contractor is not authorized to use a vehicle in the course of performing work pursuant to this Agreement.

l. Self-Insured Retentions

Any self-insured retentions must be declared to NCTD. At the option of NCTD, the Contractor shall provide a financial guarantee satisfactory to NCTD guaranteeing payment of losses and related investigations, claim administration and defense expenses.

m. Claims-Made Coverages

If any of the Contractor's insurance is written on a claims-made form:

- The insurance coverage period must commence before the effective date of the Agreement or the beginning of work performed pursuant to the Agreement.
- Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of work under the Agreement.
- If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective date, the Contractor must purchase an extended reporting coverage for a minimum of three years after completion of work under the Agreement.
- A copy of the claims reporting requirements must be submitted to NCTD for review.

n. Task Order-Required Insurance

Task Order proposals may identify all applicable insurance costs that are not already included in Contractor’s audited overhead rate. For example, if railroad protective liability insurance is not part of the Contractor’s standard insurance coverage and the cost was not included in the audited overhead rate, then the Contractor can identify the cost for the railroad protective insurance as an ODC at the task order level.

o. Additional Insureds

The Commercial General Liability, Auto Liability, and if applicable, the Pollution Liability policies shall name in the endorsements and schedules as additional insured, North County Transit District (NCTD) and its directors, officers, agents, employees, and designated volunteers. All Agreements requiring railroad protective liability insurance shall name in the endorsement and schedules as additional insured the following entities, including their directors, officers, agents and employees as their interests may appear:

- North County Transit District (NCTD)
- Bombardier Transportation (Holdings) USA, Inc.
- Burlington Northern Santa Fe Railway (BNSF)
- AMTRAK
- San Diego Metropolitan Transit System (MTS)
- San Diego Trolley, Inc. (SDTI)
- San Diego Transit Corporation (SDTC)

p. Minimum Policy Limits and Requirements

Prior to performing any Work, Contractor shall provide proof and maintain limits no less than the following coverages.

Insurance Type	Requirements	Limits
Commercial General Liability (CGL)	Coverage shall conform to ISO Form CG 00 01 covering CGL on an “occurrence” basis. Policy shall include all elements of Coverages A, B and C.	Limits no less than \$2,000,000 - per occurrence for bodily injury, personal injury and property damage. The general aggregate limit shall be twice the required occurrence limit. The policy shall be issued on an occurrence basis.

Insurance Type	Requirements	Limits
Automobile Liability	Coverage shall conform to ISO Form CA 00 01 covering any auto (Code 1).	<p>Limits no less than \$1,000,000 - per accident for bodily injury and property damage.</p> <p>The policy shall be issued on a combined single limit.</p> <p>For services rendered within 50 feet of the railroad tracks, Contractor shall provide Automobile Liability Insurance with limit of no less than \$2,000,000 per accident for bodily injury and property damage.</p>
Workers' Compensation and Employer's Liability	<p>Insurance shall cover or insure under the applicable laws relating to workers' compensation insurance, all employees working on or about the Right-of-Way, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof.</p> <p>Not required for sole proprietors or companies with no employees. Verifiable proof of exemption shall be required by Contractor.</p>	<p>As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident; \$1,000,000 policy limit bodily injury by disease; and \$1,000,000 each employee bodily injury by disease.</p> <p>For services rendered within 50 feet of the railroad tracks, Contractor shall provide Employer's Liability Insurance with limit of no less than \$2,000,000 per accident; \$2,000,000 policy limit bodily injury by disease; and \$2,000,000 each employee bodily injury by disease.</p>

15. Organization and Communication

- a. Contractor shall assign _____ as Project Manager who can be reached at _____ or by email at _____. The Project Manager shall not be removed from the Work or reassigned without the prior written consent of NCTD. In the event the Project Manager leaves Contractor’s employ, Contractor shall notify NCTD and designate a new Project Manager in writing that meets NCTD’s requirements within five calendar days.
- b. NCTD shall assign _____ as Project Manager who can be reached at _____ or by email at _____ to provide direction, coordinate procedures and manage all performance and technical issues of the Agreement.
- c. The key personnel indicated in the Contractor’s proposal shall perform the Work. Replacements required due to unforeseen circumstances may be accepted by NCTD. Such acceptance, however, will not imply that NCTD has evaluated the replacement to be equally, less, or more qualified than the key person replaced. Key personnel identified in the proposal shall not be replaced unless such replacement is approved in advance by NCTD in writing. Resumes of replacements shall be submitted to NCTD with all applicable information. NCTD will not compensate Contractor for Work performed by unauthorized staff. Replacements of personnel on Work for which NCTD is paying hourly rates shall require prior approval by NCTD. In no event shall such a replacement cause NCTD to pay a higher hourly rate than previously approved.
- d. Subcontractors not originally listed in the Proposal as part of Contractor’s team shall be added only by amendment to this Agreement. An amendment to the Agreement shall be prepared by NCTD and executed by both Parties before performance of services or NCTD will not be required to pay for the subcontractor’s expenses incurred.
- e. NCTD’s Contracts Officer identified below is solely responsible for the business relationship with the Contractor and for contractual issues and changes, the Contracts Officer is the only one authorized to receive from or transmit to the Contractor, written correspondence regarding any questions, contractual clauses, items, disputes, requests, etc., relating to the contents of the Agreement, all of which are defined as Official Correspondence.

NCTD	CONTRACTOR
North County Transit District 810 Mission Avenue Oceanside, CA 92054	
Attn: Alesia Atkinson	Attn:
Email: aatkinson@nctd.org	Email:
Tel: 760-966-6592	Tel:

Transmittal of Official Correspondence by either party may be by email or the USPS, if desired, use of USPS may be by certified mail, return receipt requested, postage prepaid method.

16. Changes to the Agreement

If a revision to the content of the Agreement is requested by Contractor or NCTD and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner:

- a. A letter outlining the requested changes shall be forwarded to the NCTD Contracts Officer by the Contractor or NCTD Project Manager (see Agreement section titled, "Organization and Communication").
- b. An amendment to the Agreement shall be prepared by NCTD and executed by both Parties before performance of any revised services or adjustment of rates and may require Board of Directors ("Board") approval. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement. Payment may be delayed or denied for Work performed without an authorizing amendment.
- c. This Agreement shall only be amended, modified or changed in writing, executed by authorized representatives of the Parties, with the same formality as this Agreement was executed. Any attempt to amend, modify, or change this Agreement by either an unauthorized representative or unauthorized means shall be void.

17. Labor Compliance – NOT APPLICABLE

18. Federal Requirements – NOT APPLICABLE

19. Sanctions, Fines and Additional Costs by Court Ruling

The Contractor shall be responsible for sanctions, fines, interest and any other additional costs imposed by a court ruling, which results from negligence, mismanagement and/or delays that are not directly and unequivocally attributable to NCTD employees or agents.

20. Compliance with Law

- a. Contractor shall comply with all applicable laws, ordinances, codes and regulations of the Federal, California, and local governments relating to the performance of the Work, including any changes to such applicable laws, ordinances, codes and regulations of the Federal, California, and local government during the performance of the Work. To the extent that the Federal requirements provided in herein do not directly apply to the Work, Contractor shall ensure that the Work, including but not limited to any and all work-product created under this Agreement, shall permit compliance with those requirements.
- b. Contractor shall be aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, contractors, and subcontractors that are included in this Agreement.
- c. By executing this Agreement Contractor certifies that it is (i) not owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.) or (2) not supplying any product for use on the Federal public works project that is produced or manufactured in a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the U.S.T.R. Countries currently listed on the Priority Watch List by the U.S.T.R. are: Argentina, Chile, China, India, Indonesia, Russia, Saudi Arabia, Ukraine, and Venezuela. This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001. Contractor and any of its subcontractors shall provide

immediate written notice to NCTD if, at any time, it learns that its certification was erroneous by reason of changed circumstances.

- d. Contractor shall not knowingly enter into any subcontract under this Agreement: (i) with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.; or (ii) for the supply of any product for use on the Federal public works project under this Agreement that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. Contractor may rely upon the certification in this section unless it has knowledge that the certification is erroneous. This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor or its subcontractor knowingly rendered an erroneous certification, in addition to other remedies available to NCTD, NCTD may cancel this Agreement at no cost. The definitions pertaining to this section are those that are set forth in 49 CFR 30.7-30.9.
- e. Contractor will comply with all applicable export laws and regulations, including the US Department of Commerce's Export Administration Regulations, the US Department of State's International Traffic in Arm Regulations, and other applicable export laws. Contractor will not export, reexport, transfer, release, or otherwise dispose of, in whole or in part, or permit access to or transfer or use of embargoed countries or denied entities or persons except in accordance with all then current applicable US government export laws and regulations.
- f. Certification Clause Contractor Must Pass Through to Subcontractors:
Contractor agrees to insert the remainder of this subsection, without modification, including this paragraph, in all solicitations and subcontracts:
 - (1) Subcontractor, by submission of an offer and/or execution of a contract with a contractor, certifies that it is (i) not an owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.) or (2) not supplying any product for use on the Federal public works project that is produced or manufactured in a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the U.S.T.R.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(2) Subcontractor shall provide immediate written notice to the Contractor if, at any time, subcontractor learns that its certification was erroneous by reason of changed circumstances.

(3) A contractor shall not knowingly enter into any subcontract under this contract: (i) with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.; or (ii) for the supply of any product for use on the Federal public works project under this contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. The contractor may rely upon the certification in paragraph (g)(1) of this clause unless it has knowledge that the certification is erroneous.

(4) Unless the restrictions of this clause have been waived under the contract for the Federal public works project, if a contractor knowingly enters into a subcontract with a subcontractor that is a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or that supplies any product for use on the Federal public works project under this contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., the Contract Officer may direct, through higher-tier contractors, cancellation of this contract at no cost to the government.

(5) Definitions. The definitions pertaining to this clause are those that are set forth in 49 CFR 30.7-30.9.

(6) The certifications in this section are a material representation of fact upon which reliance was placed when making the award. If it is later determined that a subcontractor knowingly rendered an erroneous certification, in addition to other remedies available to the government, the government Contracts Officer may direct, through higher-tier contractors, cancellation of this subcontract at no cost to the government.

21. Performance Evaluation

In order to establish a written record of performance, NCTD shall at a minimum conduct a review and evaluation of Contractor's performance at time of closeout of this Agreement. This review shall assist NCTD and Contractor in determining the quality and level of performance and as a reference for making responsibility determinations on future procurements.

Contractor will be evaluated on various factors, including the following: value of services, technical performance, fair and reasonable cost, timeliness, planning and implementation, quality of service, compliance, and business relations. Contractors who are found to be deficient in their evaluations will be sent a copy of their evaluation. Evaluations shall be kept on file at NCTD for reference consistent with NCTD's [Records Retention Schedule](#).

22. Escalation of Issues

In the event issues arise that have not been satisfactorily addressed by the Project Managers of the Contractor and NCTD's Contracts Officer, the issue is to be escalated to the following:

NCTD	CONTRACTOR
TBD	
Chief of Procurement & Contract Administration	

23. Indemnification

Indemnity. Contractor shall, to the fullest extent permitted by law, hold harmless, protect, defend and indemnify NCTD and its Board of Directors and each member of the Board, officers, agents and employees, representatives and their successors and assigns ("NCTD" and/or "Indemnified Parties"), from and against any and all losses, liabilities, claims, suits, damages, expenses and costs, including reasonable attorney's fees and costs, and expert costs and investigation expenses, arising out of or attributable, in whole or in part, from the performance or failure to perform by Contractor, its employees, representatives, subcontractors, or agents regardless of whether or not such claim, loss or liability is caused, in part by a party indemnified hereunder. Insurance amounts required by NCTD shall not serve as a cap on Contractor's liability.

General Indemnity Provisions. This indemnity is in addition to any other rights or remedies that NCTD may have under the law or this Agreement. In the event of any claim or demand made against any party that is entitled to be indemnified hereunder, NCTD may, at its sole discretion, reserve, retain or apply any monies due to Contractor under this Agreement for the purpose of resolving such claims; provided however, that NCTD may release such funds if Contractor provides NCTD with reasonable assurances of protection of NCTD's interest. NCTD shall, in its sole discretion determine whether such assurances are reasonable.

Contractor agrees that its duty to defend the Indemnified Parties arises upon an allegation of liability based upon its performance under this Agreement by Contractor, its officers, agents, representatives, employees, subcontractors, or anyone for whom Contractor is liable and that an adjudication of Contractor's liability is not a condition precedent to Contractor's duty to defend. Contractor shall defend,

at its own cost, expense and risk, with counsel of NCTD's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Indemnified Parties. To the extent of its liability, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the Indemnified Parties, in any such suit, action or other legal proceeding. Contractor shall reimburse the Indemnified Parties for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

This section of the Agreement shall apply to all liability, regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor. This section of the Agreement shall survive in perpetuity.

Comprehensive Environmental Responses, Compensation, and Liability Act: Contractor acknowledges that the indemnifications contained herein are intended, in part, to operate as indemnifications under Section 9607(e)(1) of the Comprehensive Environmental Responses, Compensation, and Liability Act (42 USC Section 9601, et seq.) as may be hereinafter amended.

Public Records: Contractor agrees to indemnify and defend NCTD in the event NCTD withholds production of records that Contractor has marked "Confidential" "Trade Secret" "Proprietary", or similar designations, that are responsive to a Public Records Act request pursuant to California Government Code sections 6250, et. seq. or a Freedom of Information Act request.

Prevailing Wage: Contractor shall defend, indemnify and hold NCTD, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with prevailing wage laws, if applicable.

Intellectual Property: The Contractor warrants that the processes, design, equipment, materials, or devices used in providing the services shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. If a suit or proceeding based on a claimed infringement of a patent or copyright is brought against NCTD the Contractor shall, at its own expense, defend or settle any such suit or proceeding if authorized to do so in writing by NCTD, and indemnify and hold harmless NCTD, its subsidiaries, agents and employees from all liability, damages, costs, and expenses associated therewith, including, without limitation, defense costs and attorney fees.

24. Termination

- a. Mutual Termination: This Agreement may be terminated by mutual agreement of the Parties. Any other act of termination shall be in accordance with the subsections titled "Termination for Convenience" and/or "Termination for Default" of this Agreement.
- b. Termination for Convenience: NCTD may terminate the Agreement, in whole or in part, at any time and for any reason by giving written notice to the Contractor and specifying the effective date thereof, at least fifteen (15) days prior to the effective date. If the Agreement is terminated for convenience as provided in this Section, Contractor shall be entitled to receive compensation for any satisfactory Work completed up to the receipt by Contractor of notice of termination, less any payments theretofore made and not to exceed the amount payable herein, and for satisfactory Work completed between the receipt of notice of termination and the effective date of termination pursuant to a specific request by NCTD for the performance of such Work. If the Contractor has any property in its possession belonging to NCTD, the Contractor will account for the same and dispose of or return it in the manner NCTD directs.
- c. Termination for Default: NCTD may terminate this Agreement upon giving of written notice of intention to terminate for cause. When reasonable grounds for insecurity arise with respect to the performance of the Contractor, NCTD may issue a written demand for adequate assurance of due performance from Contractor before issuing a notice of termination for default. NCTD is under no obligation to demand adequate assurance, but if it does, Contractor shall provide assurance within 15 calendar days. Failure of Contractor to provide such assurance shall constitute cause for a determination that Contractor is in default and can be terminated for cause. Reasons for termination

for cause also shall include: (a) a material violation of any of the covenants, agreements, or stipulations of this Agreement by Contractor, (b) Contractor, through any cause, failing to fulfill in a timely and proper manner its obligations under this Agreement, (c) any act by Contractor exposing NCTD to liability to others for personal injury or property damage, or (d) if Contractor is adjudged bankrupt, Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Contractor's insolvency. Written notice by NCTD of termination for cause shall contain the reasons for such intention to terminate and shall specify the effective date thereof. Unless prior to the effective date of the termination for cause the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall cease and terminate on the effective date specified in the written notice by NCTD.

In the event of such termination, Contractor shall be paid the reasonable value of Work satisfactorily rendered up to the date of receipt of the notice of termination in accordance with this Agreement, less any payments theretofore made, as determined by NCTD, not to exceed the amount payable herein, and Contractor expressly waives any and all claims for damages or compensation arising under this Agreement in the event of such termination, except as set forth herein.

If it is later determined by NCTD or any other decision maker including a court of competent jurisdiction and/or arbitrator, that the Contractor had an excusable reason for not performing, such as force majeure events that are not a default; NCTD, after setting up a revised project schedule and Payment Schedule, may allow the Contractor to continue Work, or treat the termination as a termination for convenience, at NCTD's sole option.

- d. Rights of NCTD in the Event of Termination for Default: In the case of a termination of the Agreement for default by the Contractor, the Contractor agrees that NCTD may procure the materials and services to complete the Work from other sources at the sole discretion of NCTD and may be deducted from the unpaid balance due the Contractor, or, if applicable, may collect against the Contractor's bond of surety, or may invoice the Contractor for all costs so paid. The prices paid by NCTD to complete the Work shall be considered the prevailing market price at the time such purchase is made or such Agreement is entered into.

Separate Agreement negotiations may be entered into, at the sole discretion of NCTD, after the Agreement termination concerning the disposition and materials, supplies and equipment acquired by the Contractor for the requirements of the Agreement.

- e. Remedies and Rights of Contractor: The Contractor shall not be relieved of any responsibility under the Agreement for Work accepted by NCTD before the termination of the Agreement. Furthermore, the termination of the Agreement shall in no way relieve the Contractor from any of its covenants, undertakings, duties and obligations under this Agreement nor limit the rights and remedies of the Board hereunder in any manner whatsoever.
- f. Work Stopped by Court or Other Public Authority: If the Work should be stopped under an order of any court or other public authority, for a period of three (3) months or more through no act or default of the Contractor or anyone employed by it, or if NCTD has failed to comply with its obligations in any way, or if NCTD should fail to issue any certificate for payment for undisputed amounts within thirty-five (35) days after payment is due, then the Contractor may, upon fifteen (15) days written notice to NCTD, stop Work or terminate the Agreement and recover from NCTD payment for all Work executed and accepted, all losses sustained, and reasonable profit.
- g. Opportunity to Cure: In the case of a termination for breach or default, NCTD will allow the Contractor ten (10) days in which to cure the defect, except that if the nature of the cure requires more than ten (10) days to complete, then the cure period may, in the sole and absolute discretion of NCTD, be extended sufficiently to allow completion of the cure to be diligently pursued by the Contractor. If the Contractor fails to remedy to NCTD's satisfaction the breach or default of any of the terms, covenants, or conditions of the Agreement within ten (10) days or other cure period after receipt by Contractor or written notice from NCTD setting forth the nature of said breach or default, NCTD shall have the right to terminate the Contractor without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude NCTD from

also pursuing all available remedies against the Contractor and its sureties for said breach or default.

25. Suspension for Cause or Convenience

NCTD may, without cause, order the Contractor in writing to suspend, or interrupt performance of the Work in whole or in part for such period of time as NCTD may determine. An adjustment may be made for an increase in the cost of performance of the Agreement including profit on the increased cost of performance, if any, caused by any such suspension or interruption. An equitable adjustment may be made of the price or prices specified in the Agreement relating to the portion of the Work not suspended or interrupted by the notice of suspension or interruption. No adjustment shall be made to the extent:

- a. That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- b. An equitable adjustment is made or denied under another provision of this Agreement.

26. Effect of Suspension, or Interruption for Cause or Convenience

Any suspension or interruption for cause or convenience shall be effected by delivery to the Contractor of a written notice of suspension or interruption specifying the extent to which performance of Work under the Agreement is suspended or interrupted and the date upon which such suspension or interruption becomes effective. After receipt of the notice of suspension or interruption and except as otherwise directed by NCTD, the Contractor shall:

- a. Stop Work under the Agreement on the date and to the extent specified in the notice of suspension or interruption;
- b. Place no further orders or subcontracts for materials, services or facilities except as necessary to complete the portion of the Work under the Agreement that is not suspended or interrupted;
- c. Place no further equipment at the site of the Work except as necessary to complete the portion of the Work under the Agreement that is not suspended or interrupted;
- d. Terminate all orders or subcontracts to the extent they relate to the performance of Work suspended or interrupted by the notice of suspension or interruption;
- e. Assign to NCTD in the manner, at the times, and to the extent directed NCTD, all the right, title and interest of the Contractor under the orders and subcontract so suspended or interrupted. NCTD shall have the right, in its discretion, to settle or pay any or all claims arising out of the suspension or interruption of such orders and subcontracts;
- f. Settle all outstanding liabilities and all claims arising out of such suspension or interruption of orders and subcontract, with the approval or ratification of the Board to the extent the Board may so require. The Board's approval or ratification shall be final for all purposes of this clause;
- g. Transfer title to NCTD, and deliver in the manner, at the times, and to the extent, if directed by NCTD, the fabricated or unfabricated parts, Work in process, completed Work, NCTD Data, supplies and other materials produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of suspension, or, and the competed or partially completed plans, drawings, information and other property which, if the Agreement had been completed, would have been required to be furnished to NCTD;
- h. Use its best efforts to sell, in the manner, at the times, and to the extent, and at the price or prices that NCTD directs or authorizes, any property of the types previously referred to herein, but the Contractor shall not be required to extend credit to any purchaser and may acquire any such property under the conditions prescribed and at a price or prices approved by NCTD. The proceeds

of any such transfer or disposition shall be applied in reduction of any payments to be made by the NCTD to the Contractor under this Agreement or shall otherwise be credited to the price or cost of the Work covered by this Agreement or paid in such other manner as NCTD may direct;

- i. Complete performance of such part of the Work as shall not have been suspended or interrupted by the notice of suspension or interruption;
- j. Take such action as may be necessary, or as NCTD may direct, for the protection and preservation of the property related to this Agreement that is in the possession of the Contractor and in which NCTD has or may acquire an interest;
- k. The Contractor shall maintain the Work site and provide such ingress and egress for local resident or tenants or the public as may be necessary during the period of suspended Work or until the Agreement has been declared terminated; and
- l. Maintain all required insurance as if the Agreement had been satisfactorily performed and accepted by NCTD.

After receipt of the notice of suspension, or interruption, the Contractor shall submit to NCTD a certified suspension or interruption claim. Such claim shall be submitted promptly but in no event later than ninety (90) days from the effective date of the notice of suspension or interruption. If the Contractor fails to submit a suspension or interruption claim at any time after such ninety (90) day period, NCTD may determine, on the basis of information available to it, the amount, if any, due to the Contractor. NCTD shall then pay to the Contractor the amount so determined.

After receipt of a certified claim, NCTD and the Contractor may agree upon the whole or any part of the amount or amounts to be paid to the Contractor because of the total or partial suspension or interruption of the Agreement. The amount may include a reasonable allowance for profit on Work performed. In no event shall such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Work not suspended, or interrupted and any claims NCTD may have against the Contractor. Nothing in this section, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts that may be agreed upon to be paid to the Contractor pursuant to this paragraph.

After receipt of a certified claim, if the Contractor and NCTD fail to agree on the amounts to be paid to the Contractor, NCTD shall determine, on the basis of the information available to it the amount, if any, due to the Contractor by reason of the suspension or interruption and shall pay the Contractor the amount that shall be determined as follows:

- a. For all Work specified in the Agreement that is performed before the effective date of the notice of suspension or interruption, the total of:
 - i. The reasonable cost to the Contractor, without profit, for all Agreement Work performed prior to the notice of suspension or interruption, including the Work done to secure the project for termination. In determining the reasonable cost, NCTD may utilize the Agreement unit prices or rates in the Payment Schedule, Agreement lump sum, the percentage of Work completed and/or any other method available to it. For purposes of determining reasonable costs, deductions will be made for the cost of any materials to be retained by the Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the Work. When in the opinion of NCTD the cost of an item of Work is unreasonably high, the reasonable cost to be allowed will be the estimated reasonable cost of performing such Work in compliance with the requirements of the plans and specifications or Scope of Work and excessive actual cost shall be disallowed.

- ii. Reasonable cost will include a reasonable allowance for overhead and general administrative overhead not to exceed a total of ten percent (10%) of direct costs of such Work.
- iii. A reasonable allowance for profit on the cost of the Work performed as determined under subparagraph (a) of this subsection, provided the Contractor established to the satisfaction of NCTD that it would have made a profit had the Agreement been completed and provided further, that the profit allowed shall in no event exceed five percent (5%) of the cost of the Work completed.
- iv. The reasonable cost to the Contractor of handling material returned to vendors, delivered to NCTD, or otherwise disposed of as directed by NCTD.

In no event shall NCTD be liable for costs incurred by the Contractor or any of its subcontractors after receipt of a notice of suspension, interruption or termination. Such nonrecoverable costs include, but are not limited to, anticipated profits on the Agreement post-suspension, post-interruption or post-termination, employee salaries, administrative expenses, overhead or unabsorbed overhead, the costs of preparing and submitting the proposal, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, pre-judgment interest, or any other expense that is not reasonable.

27. Disputes

Any dispute, controversy, or claim arising out of or related to this Agreement or any claimed breach thereof, shall be resolved in accordance with the provisions of this section.

- a. Notice of Dispute: If any dispute, controversy, or claim arises out of or relating to the Agreement or any claimed breach thereof, the disputing Party shall give the other Party written notice of the dispute, controversy, claim, or claimed breach ("Notice of Dispute"). The Notice of Dispute shall include a brief statement of the Party's claim(s) and the relief demanded.
- b. Right to Resolve or Cure: The other Party shall have ten (10) days after receipt of the Notice of Dispute to agree in writing to resolve or cure the dispute, controversy, or claim.
- c. Failure to Resolve or Cure: If the dispute, controversy, or claim has not been resolved or cured by the Parties within ten (10) days after the disputing Party gives the Notice of Dispute, the Parties may agree, that as a precondition to the initiation of litigation, the controversy, claim, or dispute shall first be submitted to mediation. If elected to by the Parties, the resulting mediation shall be non-binding, and intended to provide an opportunity for the Parties to evaluate each other's cases and arrive at a mutually agreeable resolution of the dispute.
 - i. The mediation process set forth in this section shall be administered by the American Arbitration Association and governed by their rules in effect at the time of filing, or by any other neutral organization agreed to by the Parties (hereinafter called "Administrator").
 - ii. The costs for all mediation, including the administrative fees and mediator compensation, will be shared equally by all Parties. Fees shall be jointly negotiated by all Parties directly with the Administrator. If all Parties agree, then the mediation costs may increase as required for resolution of the dispute. The expenses of witnesses for any Party shall be paid by the Party producing such witnesses.
 - iii. A single mediator, acceptable to all Parties, shall be used to mediate the dispute. The mediator will be knowledgeable regarding the subject matter of the Agreement, and will be selected from lists furnished by the Administrator. The initial mediation session shall commence within thirty (30) days of filing, unless otherwise agreed by the Parties, or at the direction of the mediator.
 - iv. At least ten (10) days before the first scheduled mediation session, each Party shall provide the mediator a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the mediator, such memoranda may be mutually exchanged by the Parties. At the first session, the Parties will be expected to produce all information reasonably required for the mediator to understand the issue presented. The mediator may require each Party to supplement such information.

- v. Mediation hearings will be conducted in an informal manner and discovery will not be allowed unless agreed to by all Parties. All discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as they relate to either party's legal position. There shall be no stenographic, audio, or video record of the mediation.
- vi. Mediation sessions are private. The Parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the Parties and with the consent of the mediator. The Parties may have an attorney present and shall advise the other Parties no less than five (5) working days before the mediation of their intent to have an attorney present, so that the other Party may also have its attorneys present.
- vii. The mediator does not have authority to impose a settlement on the Parties but will attempt to assist the Parties in reaching a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the Parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the Parties, as the mediator shall determine.
- viii. The mediator is authorized to end the mediation whenever, in the mediator's judgment, further efforts at mediation would not contribute to a resolution of the dispute between the Parties.
- ix. Any resultant agreements from mediation shall be documented in writing, as agreed upon during the mediation, and may be used as the basis for a change order or other directive as appropriate. All mediation results and documentation shall be non-binding and inadmissible for any purpose in any legal proceedings, unless such admission is otherwise agreed in writing by all Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery in subsequent proceedings.

The mediation shall be terminated by the execution of a settlement agreement by the Parties; by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or by a written declaration of a Party or Parties to the effect that the mediation proceedings are terminated.

28. Continuing the Work During Disputes

The Contractor shall continue the Work and adhere to the project schedule during all disputes or disagreements with NCTD over: any Work listed in the Scope of Work, prices, or time/deadlines. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Contractor and NCTD may otherwise agree in writing.

29. Disentanglement

A. General Obligations

Upon termination of the Agreement, Contractor shall accomplish a complete transition of the services being terminated from Contractor and any subcontractors to NCTD, or to any replacement provider designated by NCTD, without any interruption of or adverse impact on the services or any other services provided by third parties (the "Disentanglement"). Contractor shall cooperate with NCTD and any new service provider and otherwise promptly take all steps required to assist NCTD in effecting a complete Disentanglement. Contractor shall provide all information regarding the services or as otherwise needed for Disentanglement, including data conversion, files, interface specifications, training staff assuming responsibility, and related professional services. Contractor shall provide for the prompt and orderly conclusion of all Work, as NCTD may direct, including completion or partial completion of projects, documentation of Work in process, and other measures to assure an orderly transition to NCTD or the NCTD designee. All services related to Disentanglement shall be deemed a part of the base services and shall be performed by Contractor at no additional cost to NCTD beyond what NCTD would pay for the base services absent the performance of the Disentanglement services. Contractor's

obligation to provide the services shall not cease until Disentanglement is satisfactory to NCTD, including the performance by Contractor of all asset-transfers, and other obligations of Contractor provided in this Section have been completed.

B. Process

The Disentanglement process shall begin on any of the following dates: (i) the date NCTD notifies Contractor that no funds or insufficient funds have been appropriated so that the Agreement shall be terminated for convenience; (ii) the date designated by NCTD, not earlier than 60 days prior to the end of any initial or extended term, that NCTD has not elected to extend pursuant to the Agreement; or (iii) the date any Termination Notice is delivered, if NCTD or Contractor elects to terminate any or all of the services pursuant to this Agreement. Subject to the scope of Work, Contractor's obligation to perform services, and the obligation of NCTD to pay for services, shall expire upon termination except that Contractor shall remain obligated to provide Disentanglement services for up to 12 months after any such termination date, at the rates set forth in the Agreement. Contractor and NCTD shall discuss in good faith a plan for determining the nature and extent of Contractor's Disentanglement obligations and for the transfer of services in process; provided, however, that Contractor's obligation under this Agreement to provide all services necessary for Disentanglement shall not be lessened in any respect. Contractor shall be required to perform its Disentanglement obligations on an expedited basis, as determined by NCTD, if NCTD terminates the Agreement for cause.

C. Specific Obligations

1. Full Cooperation and Information

Upon Disentanglement, the Parties shall cooperate fully with one another to facilitate a smooth transition of the services being terminated from Contractor to NCTD or the NCTD designated replacement provider. Such cooperation shall include the provision (both before and after the cessation of Contractor's providing all or any part of the services under this Agreement) by Contractor to NCTD of full, complete, detailed, and sufficient information (including all information then being utilized by Contractor) to enable the NCTD personnel (or that of third parties) to fully assume and continue without interruption the provision of the services.

2. No Interruption or Adverse Impact

Contractor shall cooperate with NCTD and other NCTD service providers to ensure a smooth transition at the time of Disentanglement, with no interruption of services, no adverse impact on the provision of services or the NCTD activities, no interruption of any services provided by third parties, and no adverse impact on the provision of services provided by third parties.

3. Third-Party Authorizations

Without limiting the obligations of Contractor pursuant to any other clause herein, Contractor shall, subject to the terms of any third-party contracts, procure at no charge to NCTD any third-party authorizations necessary to grant NCTD the use and benefit of any third-party contracts between Contractor and third-party contractors used to provide the services, pending their assignment to NCTD.

4. Delivery of Documentation

Contractor shall deliver to NCTD, or its designee, at the request of NCTD, all documentation and data related to NCTD, including the NCTD Data, held by Contractor, and Contractor shall destroy all copies thereof not turned over to NCTD, all at no charge to NCTD. Notwithstanding the foregoing, Contractor may retain one copy of the documentation and data, excluding NCTD Data, for archival purposes or warranty support.

D. Preparation for Disentanglement

1. Maintenance of Assets

Contractor shall maintain all hardware, software, systems, networks, technologies, and other assets utilized in providing services to NCTD (including leased and licensed assets) in good condition and in such locations and configurations as to be readily identifiable and transferable to NCTD or its designees in accordance with the provisions of this Agreement; additionally, Contractor shall insure such assets in accordance with this Agreement.

2. Advance Written Consents

Contractor shall obtain advance written consents from all third-party licensors and lessors to the conveyance or assignment of licenses and leases to NCTD or its designee to the extent they are not in NCTD's name upon Disentanglement. Contractor also shall obtain for NCTD the right, upon Disentanglement, to obtain maintenance (including all enhancements and upgrades) and support with respect to the assets that are the subject of such leases and licenses at the price at which, and for so long as, such maintenance and support are made commercially available to other customers of such third parties whose consent is being procured hereunder.

3. Necessary Cooperation

Contractor shall provide all cooperation, take such additional actions, and perform such additional tasks, as may be necessary to ensure a timely Disentanglement in compliance with the provisions of this Section, including full performance, on or before the expiration date, of Contractor's obligations under this Section.

30. Laws and Venue

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. The law of California shall govern the resolution of any issue arising in connection with the Agreement Documents, including but not limited to, all questions concerning the validity of the Agreement Documents; the authorities of the parties to enter herein; and modifications or amendment thereto; and the rights and obligations of the parties hereunder. Contractor warrants that in the performance of this Agreement it shall comply with all applicable Federal, State, and local laws and ordinances and all lawful orders, rules, and regulations thereunder.

31. Conflict of Interest

- a. Contractor represents and warrants that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §§1090 et seq. or Government Code §§87100 et seq. during the performance of services under the Agreement proposed in the RFP. Contractor shall promptly disclose any actual or potential conflict of interest to NCTD as Official Correspondence as soon as Contractor becomes aware of such conflict. Contractor further agrees that it will not knowingly employ any person having such interest in the performance of the Agreement proposed in the RFP. Violation of this provision may result in the Agreement being deemed void and unenforceable.
- b. Depending on the nature of the work performed, Contractor may be required to publicly disclose financial interests under NCTD's Conflict of Interest Code. Contractor agrees to cause any of its affected employees or subcontractor's employees to promptly submit Statements of Economic Interests on the forms provided by NCTD upon request by NCTD.
- c. No person previously in the position of Director, Officer, employee or agent of NCTD may act as an agent or attorney for, or otherwise represent Contractor by making any formal or informal

appearance, or any oral or written communication, before NCTD or any officer or employee with NCTD for a period of twelve (12) months after leaving office or employment with NCTD if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant or agreement.

32. Standard of Conduct and Ethics

- a. Contractor is required to adhere to NCTD's Standard of Conduct, which can be found in the following link: GM-0008-Standard-of-Conduct.pdf (gonctd.com).
- b. In accordance with 18 U.S.C. 431, no member of, or delegates to, the Congress of the United States shall be admitted to a share or part of this Agreement, or to any benefit arising therefrom.
- c. No member, officer, or employee of NCTD or of a local public body during their tenure or one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- d. To the Contractor's knowledge, no Board member, officer, or employee of NCTD has any interest, whether contractual, non-contractual, and financial or otherwise in this transaction, if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other party.
- e. During the performance of work under a future Agreement, the Contractor agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest that could be construed to have an adverse impact on the dealings with NCTD.
- f. The Contractor shall take reasonable actions to prevent any actions or conditions that could result in a conflict with NCTD's best interests. These obligations shall apply to the activities of the Contractor employees, agents, subcontractors, material suppliers (or their representatives) etc. **The Contractor is responsible for implementing and maintaining an internal compliance program to ensure compliance with Agreement requirements and to monitor business ethics and potential conflicts of interest.**
- g. Contractor employees, agents, subcontractors, material suppliers (or their representatives) should not make or provide to be made any employment, gifts, entertainment, liquor, lodging, travel, food, and tickets to public functions (sports events, theater, etc.), payments, loans, free work, substantially discounted work, or other considerations to NCTD representatives, employees, or their relatives. Similarly, Contractor employees, agents or subcontractors (or their relatives) should not receive any commissions, gifts, entertainment, payment, loans, free work, substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with any work performed under this Agreement.
- h. The Contractor may notify NCTD's Compliance Officer, within forty-eight (48) hours of any instance where the Contractor becomes aware of a failure to comply with the provisions of this article.
- i. Upon request by NCTD, the Contractor agrees to provide a certified Management Representation Letter executed by an authorized Contractor representative and in a form agreeable to NCTD stating that they are not aware of any situations violating the business ethics expectations outlined in this Agreement or any similar potential conflict of interest situations.
- j. Contractor shall permit interviews of employees, reviews, and audits of accounting or other records by NCTD representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Contractor employees, agents, representatives, vendors, subcontractors, and other third parties paid by Contractor in their relations with NCTD's current or former employees or employee relatives.
- k. The Contractor warrants and covenants as follows:
 - i. That no person or selling agency has been employed or retained to solicit or secure a contract resulting from this Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach of violation of this warranty NCTD shall have the right to annul the Agreement without liability or in its

discretion to deduct from the total price or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

- ii. That no gratuities, in the form of entertainment, gifts or otherwise, have been or will be offered or given by the Contractor or any of its agents, employees or representatives to any official NCTD employee or member of the Board in an attempt to secure a contract or favorable treatment in awarding, amending, or making any determination related to the performance of this work.

- I. The Contractor agrees to include this Section in all agreements with all subcontractors and payees receiving funds in connection with the work of NCTD.

33. Contingent Fees and Gratuities

The Contractor agrees as follows:

- a. The Contractor warrants and covenants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty NCTD shall have the right to terminate this Agreement without liability or in its discretion to deduct from the total price or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
- b. The Contractor warrants and covenants that no gratuities, in the form of entertainment, gifts, or otherwise have been or will be offered or given by Contractor or any of its agents, employees or representatives to any NCTD employee or member of the Board in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determination related to the performance of this Work.

34. Whistleblower Hotline

NCTD is an organization with strong values of responsibility and integrity and has developed a number of policies and procedures to provide contractors with clear direction and guidance to ensure that NCTD's business is carried out with fairness, efficiency, impartiality and integrity. NCTD is committed to an environment where open, honest communication is the expectation, not the exception. If Contractor believes that a violation of law, regulations, Board policies, NCTD's Standard of Conduct Policy or any deviation from established business practices has occurred, NCTD encourages Contractor to report the suspect violation via the anonymous Whistleblower Hotline managed by third party vendor, Navex Global at www.nctd.ethicspoint.com or by calling 855-877-6048.

35. Maintenance of Records and Right to Audit

Books, documents, papers, accounting records, and other evidence pertaining to the performance of services under this Agreement, and costs incurred shall be maintained by Contractor and any subcontractors and made available at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement for inspection by NCTD, the State Auditor, or any duly authorized representative of the Federal Government.

NCTD may audit Contractor's records pertaining to the Work and/or the Agreement at any time during the term of the Agreement and for a three-year period thereafter. In the event an audit discloses NCTD has overpaid for any good or services, NCTD shall be entitled to an offset or payment from Contractor within thirty (30) calendar days after NCTD provides evidence of overpayment.

For the purpose of determining compliance with Public Contract Code §10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the Agreement pursuant to Government Code §8546.7; Contractor, subcontractors, and NCTD shall maintain and make available for inspection all books, documents, papers, accounting records, emails and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such

materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The state, State Auditor, NCTD, FTA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Contractor and its Certified Public Accountants (CPA) work papers that are pertinent to the Agreement, Contractor's or its subcontractors' performance under and compliance with the Agreement, and Indirect Cost Rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished to NCTD or its designated agent if requested. Subcontracts in excess of \$25,000 shall contain this provision. Contractor shall ensure that all records relevant to this Agreement are stored only at locations or on servers or remote databases (cloud) that are within the legal jurisdiction of the United States.

36. Ownership and Care of Work Product, Data, and Intellectual Property

- a. All deliverables prepared or obtained under the terms of this Agreement shall be delivered to and become the property of NCTD. The term "deliverables" includes, but is not limited to, all original drawings, reports, and other documents, including detailed calculations, digital/electronic databases, source code or other intellectual property, videos, imagery, data sets, analyses, maps, and other work products developed for the Project. Deliverables must be provided to NCTD in the format requested by NCTD and include metadata.
- b. NCTD shall have the right to remove Contractor's and subcontractor's logos from all deliverables. Should Contractor provide a slide deck, report or other presentation items or deliverables to NCTD that include logos or other identifying marks, Contractor shall provide the deliverables in editable form to allow NCTD the ability to remove such marks. All deliverables provided to NCTD must be free of photos, data or other items that are subject to copyrights or other ownership interests that would limit NCTD's ability to reuse and disseminate any portion of the deliverable.
- c. Definitions.
 - i. "Process" or "Processing" of data for purposes of this Agreement means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works; (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available; or (c) block, erase or destroy. "Processing" and "Processed" have correlative meanings.
 - ii. "NCTD Data" for purposes of this Agreement means any and all information, data, materials, works, expressions or other content, including any that are (a) uploaded, submitted, posted, transferred, transmitted or otherwise provided or made available by or on behalf of NCTD or any authorized user for Processing by or through any hosted services; or (b) collected, downloaded or otherwise received by Contractor or any hosted services for NCTD or any authorized user pursuant to this Agreement or at the written request or instruction of NCTD or such authorized user. All output, copies, reproductions, improvements, modifications, adaptations, translations and other derivative works of, based on, derived from or otherwise using any NCTD Data are themselves also NCTD Data. For the avoidance of doubt, NCTD Data includes all authorized user data and Personally Identifiable Information from NCTD personnel or customers, but does not include any Contractor Materials.
- d. Notwithstanding any provision of this Agreement to the contrary, any routines, methodologies, processes, libraries, tools or technologies created, adapted or used by Contractor in its business generally, or developed prior to execution of the Agreement, including all associated intellectual property rights (collectively "Contractor Materials"), shall be and remain the sole property of Contractor or third party licensors, and NCTD shall have no interest in or claim to Contractor Materials, except as necessary to exercise its rights under the Agreement and as

otherwise may be provided in the form of a license from Contractor to NCTD and any authorized users of NCTD.

- e. As between NCTD and Contractor, NCTD is and shall remain the sole and exclusive owner of all right, title and interest in and to NCTD Data. Contractor shall use, and ensure that its representatives use, reasonable care that is at least as protective as the efforts it uses with respect to its own confidential information, to safeguard NCTD Data from use or disclosure other than as permitted under the Agreement. Without limiting the foregoing, Contractor shall maintain in effect and enforce rules and policies to protect against access to or use or disclosure of NCTD Data other than in accordance with this Agreement.
- f. Contractor agrees that it will:
 - Not use or permit the use of NCTD Data other than as strictly necessary to exercise its rights or perform its obligations under this Agreement; and
 - Not use or permit the use of any of NCTD Data, directly or indirectly, in any manner to the detriment of NCTD; and
 - Maintain NCTD Data in strict confidence and not disclose or make available NCTD Data to any person without NCTD's prior written consent. Provided, however, that Contractor may disclose the NCTD Data to its representatives who: (i) have a "need to know" for purposes of any performance, or exercise of any rights with respect to such NCTD Data, under this Agreement; and (ii) have been informed in writing of the highly confidential nature of the NCTD Data and the limitations, procedures and obligations that apply to the access, use and disclosure of NCTD Data under this Section; and (iii) are themselves bound by written restricted use and nondisclosure agreements or obligations at least as restrictive as those set forth in this Agreement, provided, further, that Contractor shall be responsible for ensuring its representatives' compliance with, and shall be liable for any breach by its representatives, of this section.
- g. Contractor may disclose NCTD Data when it is required by law, rule, regulation, or court order upon notice to NCTD sufficient to allow NCTD to challenge such required disclosure. Contractor agrees that permission to disclose NCTD Data on one occasion shall not authorize the Contractor to further disclose such information or disseminate the same on any other occasion.
- h. Upon NCTD's written request at any time and subject to any contrary obligations under applicable law, Contractor shall at NCTD's direction promptly return or destroy and erase from all systems it directly or indirectly uses or controls (a) all originals and copies of all documents, materials and other embodiments and expressions in any form or medium that contain, reflect, incorporate or are based on NCTD Data and provide a notarized written statement to NCTD certifying that it has complied with the requirements of this subsection.
- i. During the term and thereafter in perpetuity, Contractor will not Process or otherwise undertake or refrain from any act with respect to any NCTD Data in any manner, including any actual or attempted Processing thereof, except for the sole purpose of performing under this Agreement and in compliance with: (i) the express terms and conditions of this Agreement or as NCTD may hereafter expressly direct in advance in writing; and (ii) all applicable laws (including all then current and applicable laws relating to spamming, privacy and consumer and data protection).
- j. Except as NCTD or an authorized user of NCTD may submit to Contractor personnel for purposes of NCTD's or such authorized user's use of the hosted service, or as NCTD may hereafter expressly direct in advance in writing, Contractor will not under or in connection with

this Agreement or any transaction or arrangement hereunder, collect any NCTD Data from or in connection with NCTD's or any authorized user's access to or use of the hosted services, or through any access Contractor may have to the NCTD Systems, including through any cookies, applets, beacons or other data mining methods or technologies.

- k. In the event Contractor or its subcontractors will have access to an NCTD database, server, network, or other NCTD technology or data, Contractor and all applicable subcontractors, and applicable employees thereof, shall take adequate precautions to ensure NCTD information is not leaked, hacked or otherwise lost, disclosed or misused. In the event of a data breach caused by Contractor, subcontractors, or any of their employees, the indemnification provisions of this Agreement shall apply and all costs for remedying the breach shall be reimbursed to NCTD by the relevant Contractor and/or subcontractors.
- l. Contractor agrees that any and all property rights, including intellectual property rights such as copyrights or patents that arise from creation of deliverables or other work products required by this Agreement for exclusive use by NCTD or its authorized users, excluding however, Contractor Materials, shall be vested in NCTD and hereby agrees to relinquish all claims to such property rights in favor of NCTD. Additional provisions concerning intellectual property, if applicable, may be included as an exhibit to this Agreement.
- m. Contractor and all of its subcontractors, agents, representatives and employees are prohibited from disclosing or selling NCTD Data or information provided, collected or obtained pursuant to this Agreement without express, written permission from NCTD. Additional terms concerning privileged or confidential information or data, including, but not limited to such information or data that may qualify as Personally Identifiable Information, Personal Credit Information, or data covered by any other privacy laws, may be set forth in the Scope of Work or an exhibit to this Agreement. Contractor shall have no rights to use work product, deliverables, intellectual property, or any other property of NCTD's without express, written permission from NCTD.
- n. All documents, data, and materials prepared or developed by the Contractor and its subcontractors pursuant to this Agreement shall become the property of NCTD without restriction or limitation on their use and shall be made available upon request to NCTD at any time. Original copies of such shall be delivered to NCTD upon completion of the services or termination of the services. The Contractor shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the written approval of NCTD.
- o. No material or technical data prepared by the Contractor under this Agreement is to be released by the Contractor to any other person or agency except as necessary for the performance of the services. All press releases or information to be published in print or electronic media, shall be distributed only after first being authorized by NCTD. NCTD shall have the right to use, duplicate, modify or disclose the technical data and the information conveyed therein, in whole or in part, in any manner whatsoever, and to have or permit others to do so.
- p. The Contractor shall agree to grant to NCTD and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free license to publish, translate, reproduce, deliver, and use as they deem fit all technical data covered by copyright supplied for this Agreement. No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for NCTD to use in the manner herein described.
- q. The deliverables hereunder are provided for the exclusive use of NCTD, and such services, data, recommendations, proposals, reports, design criteria, and similar information provided by Contractor are not to be used or relied upon by other parties except as authorized by NCTD.

- r. Upon request, NCTD shall be entitled to a complete copy of Contractor's contracts with any subcontractor or supplier utilized to carry out Work under this Agreement as a deliverable.
- s. Licenses to Proprietary Software. For any software programs developed specifically for NCTD's use under the Agreement, Contractor shall provide a nonexclusive, nontransferable, fully-paid, perpetual, irrevocable, royalty-free worldwide license to NCTD (or other service provider, as the case may be), at no charge to NCTD, to use, copy, and modify all Contractor underlying works and Contractor derivatives that would be needed in order to allow NCTD to continue to perform for itself, or obtain from other providers the services as the same might exist at the time of Disentanglement. Contractor also shall provide NCTD with a copy of each such program, in such media as requested by NCTD, together with object code, source code, and appropriate documentation. Contractor also shall offer to NCTD the right to receive maintenance (including all enhancements and upgrades) and support with respect to such Contractor underlying works and Contractor derivatives for so long as NCTD requires, at the best rates Contractor is offering to other major customers for services of a similar nature and scope.
- t. Complete Documentation. Contractor shall provide to NCTD complete information, including complete documentation, as required to be provided under this Agreement, in accordance with the standards and methodologies to be implemented by Contractor, for all software (including applications developed as part of the services) and hardware, that is sufficient to enable NCTD, or another service provider, to fully assume the provision of the services to NCTD. Contractor shall provide such documentation for all upgrades to or replacements of software or hardware, concurrently with the installation thereof.
- u. Throughout the term of the Agreement and at all times in connection with its actual or required performance of the Scope of Work hereunder, Contractor shall:
- i. Maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of NCTD's Data that meet or exceed the requirements of NCTD's data security requirements and, to the extent such practices and standards are consistent with and not less protective than the foregoing requirements, are at least equal to applicable best industry practices and standards;
 - ii. Provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling or Processing of such information that ensure a level of security appropriate to the risks presented by the Processing of NCTD's Data and the nature of such data, consistent with best industry practice and standards;
 - iii. Take all reasonable measures to:
 - Secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the scope of work against "hackers" and others who may seek, without authorization, to disrupt, damage, modify, access or otherwise use Contractor's systems or the information found therein;
 - Prevent (a) NCTD and its authorized users from having access to the data of other customers or such other customer's users of any Hosted Services; (b) NCTD's Data from being commingled with or contaminated by the data of other customers or their users of any Hosted Services; and (c) unauthorized access to any NCTD's Data;

- Continuously monitor its systems for potential areas where security could be breached;
 - Immediately report to NCTD any breach of security or unauthorized access to NCTD's Data that Contractor detects or becomes aware of;
 - Use diligent efforts to remedy such breach of security or unauthorized access in a timely manner and deliver to NCTD a root cause assessment and future incident mitigation plan with regard to any breach of security or unauthorized access affecting any NCTD Data that sets out written details regarding Contractor's investigation of such incident and, upon NCTD's written request, provide a second more in-depth investigation and results of its findings;
 - Refrain from notifying, for or on behalf of NCTD or any authorized user, any regulatory authority, consumer or other Person of any such security breach or unauthorized access unless NCTD specifically requests in writing that Contractor do so; and
 - If such security breach or unauthorized access results from any act or omission of Contractor or any Contractor personnel, promptly reimburse NCTD for all reasonable costs and expenses NCTD may incur in providing any notification of such security breach or unauthorized access.
 - Without limiting the generality of the foregoing, Contractor and NCTD will work together to formulate a plan to rectify all security breaches and unauthorized access concerning NCTD's Data.
- v. Unauthorized Access. Contractor shall not access, and shall not permit any access to, the NCTD Data, in whole or in part, whether through Contractor's systems or otherwise, without NCTD's express prior written authorization. Such authorization may be revoked by NCTD in writing at any time in its sole discretion. Any access to the NCTD Data shall be solely in accordance with the terms and conditions, and in no case exceed the scope of, the NCTD's authorization pursuant to this Section. All NCTD-authorized connectivity or attempted connectivity to NCTD Data or systems shall be only through NCTD's security gateways and firewalls and in compliance with NCTD's security policies as expressed by the NCTD Director of Technical Services or his/her designee.
- w. Contractor Systems. Contractor shall be solely responsible for the information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems) and networks used by or for Contractor to access NCTD Data or systems or otherwise in connection with the scope of work (NCTD Systems) and shall prevent unauthorized access to the NCTD Systems through Contractor's systems.
- x. Security Audits. During the Term and for five years thereafter, Contractor shall maintain complete and accurate records relating to its data protection practices and the security of any of NCTD's Data, including any backup, disaster recovery or other policies, practices or procedures relating to NCTD's Data and any other information relevant to its compliance with this Section; and upon NCTD's request, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by NCTD or its authorized representative, provided that NCTD shall: (i) give Contractor reasonable prior notice of any such audit; (ii) undertake such audit no more than once per calendar quarter, except for good cause shown; and (iii) conduct or cause to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of this Agreement. NCTD may, but is not obligated to, perform such

security audits, which shall, at NCTD's option and request, include penetration and security tests, of any and all Contractor Systems and their housing facilities and operating environments.

- y. **Regulatory and Compliance Audits.** Any authorized representative of any regulatory agency, taxing authority or private entity that functions in a quasi-regulatory manner that has jurisdiction over NCTD in connection with its regulatory functions (each, a "Regulator") shall, upon request, have the same audit rights as those set forth in foregoing Subsection, provided that no condition or restriction stated herein shall apply to any Regulator to the extent it is contrary to applicable law. Contractor shall cooperate with all individuals conducting such audits and comply with all reasonable recommendations that result from such inspections, tests and audits within reasonable time frames. Without limiting any of Contractor's other obligations under this Section, if Contractor engages a third-party auditor to perform a Statement on Standards for Attestation Engagements No. 16 (SSAE 16) audit of Contractor's operations, information security program or disaster recovery/business continuity plan, Contractor shall provide a copy of the audit report to NCTD promptly within five Business Days after Contractor's receipt of such report.
- z. **Nonexclusive Remedy for Security Breach.** Any failure of the Contractor to meet the requirements of this Agreement with respect to the security of any NCTD Data, including any related backup, disaster recovery or other policies, practices or procedures, is a material breach of this Agreement for which NCTD, at its option, may terminate this Agreement immediately on written notice to Contractor without any notice or cure period, and Contractor shall promptly reimburse to NCTD any fees prepaid by NCTD prorated to the date of such termination.
- aa. **Redundancy, Data Backup and Disaster Recovery.** Contractor shall, in accordance with the provisions of this Section, maintain or cause to be maintained disaster avoidance procedures designed to safeguard the NCTD Data, Contractor's Processing capability and the availability of any portion of the scope of work constituting Hosted Services, in each case throughout the Term and at all times in connection with its actual or required performance of the scope of work hereunder. The force majeure provisions the Agreement shall not limit Contractor's obligations under this Subsection. In addition, Contractor shall be responsible for the following:
 - i. **Redundant Hosting and Connectivity.** Contractor shall simultaneously operate a mirror system at a hardened data center facility in the United States that is geographically remote from the primary system on which any software that is a deliverable for NCTD or Hosted Services that are hosted by Contractor (the "Secondary Backup Facility") that may be called for in the scope of work. Except for its location and housing facility, the mirror system shall: (a) be identical in all respects to the primary system; (b) have hardware and software, network connectivity, power supplies, backup generators and other similar equipment and services that operate independently of the primary system; (c) have fully current backups of all NCTD Data stored on the primary system; and (d) have the ability to provide the Hosted Services in accordance with this Agreement and the specifications during the performance of routine and remedial maintenance or any outage or failure of the primary system fails. Contractor shall operate, monitor and maintain such mirror system so that it may be activated within 24 hours of any failure of the Hosted Services to be available.
 - ii. **Data Backup.** Contractor shall conduct or have conducted contemporaneous backups of NCTD Data and perform or cause to be performed other periodic backups of NCTD Data on at least a daily basis and store such backup NCTD Data in a commercially reasonable location and manner within the United States and, in addition, no less than daily at the Secondary Backup Facility. On written notice from NCTD and, in any case, on a monthly/daily basis, Contractor shall provide NCTD with a copy of the backed up NCTD Data in such machine-readable format as NCTD reasonably requests. Contractor shall provide all monthly/daily backups at its sole cost and expense. No

backup of NCTD Data shall be counted in allotting or calculating any data storage actually used or permitted to be used by NCTD or any associated payment or fee.

iii. Disaster Recovery/Business Continuity. Throughout the Term and at all times in connection with its actual or required performance of the scope of work hereunder, Contractor shall:

- Maintain a Business Continuity and Disaster Recovery Plan for any Hosted Services (the "Plan") and implement such Plan in the event of any unplanned interruption of the Hosted Services. Contractor's current Plan, revision history, and any reports or summaries relating to past testing of or pursuant to the Plan will be provided to NCTD upon request. Contractor shall actively test, review and update the Plan on at least a quarterly basis using industry best practices as guidance. Contractor shall provide NCTD with copies of all such updates to the Plan promptly upon request. All updates to the Plan shall be subject to the requirements of this Section; and
- Provide NCTD with copies of all reports and summaries resulting from any testing of or pursuant to the Plan promptly after Contractor's receipt or preparation thereof. If Contractor fails to reinstate the Hosted Services within the periods of time set forth in the Plan, NCTD may, in addition to any other remedies available hereunder, in its sole discretion, immediately terminate this Agreement as a non-curable default under the Termination provisions of this Agreement.

37. Ownership of NCTD Provided or Purchased Materials, Equipment, Devices, Etc.

All NCTD provided or purchased materials, equipment, devices, etc. obtained under the Agreement documents shall be considered property of NCTD without restriction or limitation on their use and shall be made available upon request to NCTD at any time.

38. Independent Contractor

Contractor is retained as an independent contractor and is not an employee of NCTD. No employee or agent of Contractor or its subcontractors shall become an employee of NCTD. The Work to be performed shall be in accordance with the Work described in the Scope of Work, subject to such directions and amendments from NCTD as herein provided. Any language in the Scope of Work that may directly or indirectly imply employer responsibility for NCTD is unintended and hereby superseded. Nothing contained herein shall be construed as creating the relationship of employer and employee between NCTD and Contractor or their agents and employees. The Contractor shall perform its services as an independent contractor and in accordance with its own methods, the Agreement Documents, applicable laws and regulations. The Contractor shall have exclusive and complete control over its employees and subcontractors.

39. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than NCTD and the Contractor.

40. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

41. Waiver

The rights and remedies of the Parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

42. Assignment

Contractor shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of NCTD, which may be withheld for any reason.

43. Confidentiality

Contractor is prohibited from using any social media to reference any ongoing or completed Work for NCTD without NCTD's express written permission. Social media is defined as a set of Internet tools that aid in the facilitation of interaction between people online, including but not limited to, LinkedIn, Twitter, Facebook, YouTube and Myspace.

Contractor will perform services for NCTD that may require NCTD to disclose confidential, financial, and/or proprietary information ("Confidential Information") to Contractor. Confidential Information is any information of any kind, nature, or description concerning any matters affecting or relating to Contractor's services for NCTD, the business or operations of NCTD, and/or the products, drawings, plans, processes, or other data of NCTD. Accordingly, to protect NCTD's Confidential Information that will be disclosed to Contractor, Contractor agrees as follows:

- a. To hold the Confidential Information received from NCTD in strict confidence and exercise a reasonable degree of care to prevent disclosure to others.
- b. To not disclose or divulge either directly or indirectly the Confidential Information to others unless first authorized to do so in writing by NCTD.
- c. To not reproduce the Confidential Information nor use this information commercially or for any purpose other than the performance of its duties for NCTD.
- d. To, upon the request or upon termination of the relationship with NCTD, deliver to NCTD any drawings, notes, documents, equipment, data, or materials received from NCTD or originating from its activities for NCTD.
- e. To grant NCTD the sole right to determine the treatment of any information that is part of the Work received from Contractor, including the right to keep the same as a trade secret, to use and disclose the same without prior patent applications, to file copyright registrations in its own name or to follow any other procedure as NCTD may deem appropriate.
- f. To grant NCTD the right to take action, up to and including termination of the Agreement for violations of this Agreement.
- g. To accept that any unauthorized access, modification, manipulation, destruction, or disclosure of confidential information is a violation of this Agreement and may be a violation of state and federal laws.

44. Sensitive Security Information - NOT APPLICABLE

45. Integration

This Agreement represents the entire understanding of NCTD and Contractor as to those matters contained herein and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This includes, but is not limited to language in Contractor's invoices, quotes, or other documents that are not written amendments integrated into this Agreement. Such language shall not be binding on NCTD. All parts of the Agreement Document are intended to be fully correlated so that any Work called for in one part and not mentioned in another, and vice versa, is to be executed the same as if mentioned in all said documents. The individual documents comprising the Agreement are complementary and indicate the prosecution and completion of the Work. The intent of the Agreement is to include all items necessary for the proper execution and completion of the Work. This is an integrated agreement.

46. Warranty of Authority

Each of the Parties signing this Agreement warrants to the other that it has the full authority of the entity on behalf of which its signature is made.

47. Survivability

The rights, obligations and conditions set forth in the sections of this Agreement concerning indemnification, limitations of liability, representations and warranties, insurance, limitations on use and disclosure, notices, disputes, records retention, ownership of intellectual property, work product or data, as well as any federal agency provisions, and any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Agreement, shall survive until the last applicable statute of limitations expires.

48. Execution of Agreement and Counterparts

This Agreement may be executed and delivered electronically via e-mail or facsimile and a scanned or facsimile signature shall be treated as an original. The Parties hereby agree to be bound when using electronic signatures and affirm that all persons executing contractual documents relating to the Agreement have verifiable and exclusive rights to use their electronic signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

Signatures on next page:

THE PARTIES, INTENDING TO BE LEGALLY BOUND, have executed this Agreement as of the last date of the Parties' signature.

NORTH COUNTY TRANSIT DISTRICT

CONTRACTOR NAME

By: _____
Greg Wellong.
Procurement & Contract
Administration Manager

By: _____
Printed Name
Title

Date: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY

CONTRACTOR NAME

By: _____
Lori A. Winfree
General Counsel

By: _____
Printed Name
Title

Date: _____

Date: _____

NOTE: If this Agreement involves a corporate party, the corporation must be represented by two individuals as follows: (A) one from the corporation's "Operational Group" (Chair of the Board, President, or a Vice-President) and; (B) one from the corporation's "Financial Group" (Secretary, Assistant Secretary, Chief Financial Officer, Treasurer or Assistant Treasurer). See California Corporations Code Section 313.

FINAL SCOPE OF WORK

PRICING FORM

ATTACHMENT 01 – TASK ORDER AGREEMENT SAMPLE

TASK ORDER AGREEMENT

CONTRACTOR: _____

AGREEMENT NO.: _____

REQUEST DATE: _____

REQUISITION NO.: _____

TASK ORDER NO.: _____

PROJECT: _____

Check One: **Standard Priority** **High Priority**

Contractor's signature shall constitute Contractor's acceptance of all the terms and conditions of the Task Order, referenced Agreement and any amendments thereto.

SCOPE OF WORK:

REQUIREMENT(S):

SCHEDULE:

TASK ORDER AGREEMENT TERMINATION DATE: insert date 60 days after last date in schedule.

Contractor shall notify NCTD's Project Manager and Contract Officer immediately, and in no event later than 30 days prior to this termination date if it believes its Work may not be complete prior to this termination date.

Compensation:

Contractor Deliverables:

Total Task Order Amount \$ _____ Firm Fixed Fee NTE Hourly

Remaining Unobligated Agreement Balance After This Task Order \$ _____

PROJECT MANAGER (Contractor):

NCTD AUTHORITY (Chief/Deputy):

Signed: _____
Name & Title

Signed: _____
Name & Title

Date: _____

Date: _____

NCTD CONTRACTING AUTHORITY:

NCTD APPROVED AS TO FORM AND LEGALITY:

Signed: _____
Julie Wiley, Esq., Chief of Procurement & Contract Administration

Signed: _____
Lori A. Winfree, General Counsel

Date: _____

Date: _____

FINAL UTILIZATION REPORT

Used to show utilization of DBEs at the conclusion of the Agreement, or if applicable, Task Order. All information on this form must be typed, excluding signatures. Required at closeout whether or not federal money used.

1. Local Agency: NCTD 2. Agreement or Task Order DBE Goal %: _____

3. Project Description: _____

4. Project Location: _____

5. Contractor's Name: _____ 6. Prime is Certified DBE: 7. Total Award Amount: _____

8. Total Dollar Amount Paid to ALL Subcontractors: _____ 9. Total Number of ALL Subcontractors: _____

10. Description of Work, Service, or Materials Supplied by DBE	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
NCTD to Complete this Section		14. TOTAL DOLLAR AMOUNT OF CLAIMED DBE PARTICIPATION	\$
20. NCTD Agreement Number: _____			
21. Federal-Aid Project Number: _____		15. TOTAL PERCENT OF CLAIMED DBE PARTICIPATION ON AGREEMENT	%
22. Agreement Execution Date: _____			
NCTD reviewer has confirmed that all DBE certifications are valid and information on this form appears complete and accurate.		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.	
23. NCTD Representative's Signature _____ 24. Date _____			
25. NCTD Representative's Name _____ 26. Phone _____		16. Preparer's Signature _____ 17. Date _____	
27. NCTD Representative's Title _____		18. Preparer's Name _____	
		19. Preparer's Title _____	

01 INSTRUCTIONS – FINAL UTILIZATION REPORT

02 CONTRACTOR SECTION

1. Local Agency – NCTD name entered as agency that is funding the Agreement or Task Order.
2. Agreement DBE Goal - Enter the Agreement or Task Order DBE goal percentage set by NCTD.
3. Project Description - Enter the project description.
4. Project Location - Enter the project location.
5. Contractor's Name - Enter the Contractor's firm name.
6. Prime Certified DBE - Check box if prime Contractor is a certified DBE.
7. Total Award Amount - Enter the total Agreement or Task Order award dollar amount for the prime Contractor.
8. Total Dollar Amount Paid to ALL Subcontractors – Enter the total dollar amount for all subcontracted Contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime Contractor information in this count.
9. Total number of ALL subcontractors – Enter the total number of all subcontracted Contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime Contractor information in this count.
10. Description of Work, Services, or Materials Supplied - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime Contractor's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion furnished by the DBE.
11. DBE Certification Number - Enter the DBE's Certification Identification Number. All DBEs must be certified with the CUCP.
12. DBE Contact Information - Enter the name, address, and phone number of all DBE subcontracted Contractors. Also, enter the prime Contractor's name and phone number, if the prime is a DBE.
13. DBE Dollar Amount - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime Contractor if the prime is a DBE.
14. Total Claimed DBE Participation - \$: Enter the total dollar amounts entered in the "DBE Dollar Amount" column: Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than the Contract/Task Order DBE Goal, additional documentation is required for the DBELO to determine if penalties apply.
15. Total Claimed DBE Participation - %: Enter the total DBE participation claimed. If the total % claimed is less than the Contract/Task Order DBE Goal, additional documentation is required for the DBELO to determine if penalties apply.
16. Preparer's Signature - The person completing the DBE Final Utilization Report on behalf of the Contractor's firm must sign their name.
17. Date - Enter the date the DBE form is signed by the Contractor's preparer.
18. Preparer's Name - Enter the name of the person preparing and signing the form.
19. Preparer's Title - Enter the position/title of the person signing the Contractor's Final Utilization Report.

NCTD SECTION

20. NCTD Agreement Number - Enter the NCTD Agreement and/or Task Order number.
21. Federal-Aid Project Number - Enter the Federal-Aid Project Number.
22. Agreement Execution Date - Enter the date the Agreement was executed.
23. NCTD Representative's Signature - The person completing this section of the form for NCTD.
24. Date - Enter the date the DBE the form is signed by the NCTD Representative.
25. NCTD Representative's Name - Enter the name of the NCTD Representative reviewing the form.
26. Phone - Enter the area code and phone number of the person signing the form.
27. NCTD Representative Title - Enter the position/title of the NCTD Representative reviewing the Final Utilization Report.