



## NAPA VALLEY TRANSPORTATION AUTHORITY Board Agenda Letter

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**TO:** Board of Directors  
**FROM:** Kate Miller, Executive Director  
**REPORT BY:** Matthew Wilcox, Program Manager – Public Transit  
(707) 259-8635 / Email: [mwilcox@nvta.ca.gov](mailto:mwilcox@nvta.ca.gov)  
**SUBJECT:** Purchase Order # 19-1013 with AVAIL Technologies

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### **RECOMMENDATION**

That the Napa Valley Transportation Authority (NVTA) Board approve Purchase Order # No 19-1013 (Attachment 1) with AVAIL Technologies to procure an upgraded Wi-Fi system for the Vine fleet in the amount of \$235,100.

### **OTHER OPTIONS FOR CONSIDERATION**

Option #1: Approve the AVAIL contract extension to upgrade to 4G LTE Service

Option #2: Do not approve the agreement and eliminate Wi-Fi service for Vine riders.

### **COMMITTEE RECOMMENDATION**

None

### **EXECUTIVE SUMMARY**

The current Wi-Fi system on the Vine fleet is 4G Verizon service. Verizon plans to sunset 3G and 4G service as of December 31, 2019. To ensure continued Wi-Fi service for the Vine's customers NVTA must upgrade the modems on all buses in the Vine fleet to support 4G LTE service. The total cost to complete the upgrade on 42 vehicles is \$234,142.

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## **PROCEDURAL REQUIREMENTS**

1. Staff Report
2. Public Comments
3. Motion, Second, Discussion and Vote

## **FISCAL IMPACT**

Is there a Fiscal Impact? Yes - \$217,301 for equipment and installation and \$16,841 in taxes. Total amount equal to \$234,142

Is it currently budgeted? No. Funding for the purchase will be from TDA/General Funds – non Fed; Capital Projects – Equipment Maintenance.

Future fiscal impact: None at this time

Consequences if not approved: The Vine will no longer be able to provide Wi-Fi service to its riders.

## **STRATEGIC GOALS MET BY THIS PROPOSAL**

Goal 1 – Serve the transportation needs of the entire community regardless of age, income, or ability

Goal 3 – Use taxpayer dollars efficiently

Goal 4 – Support Napa County’s economic vitality

## **CEQA REQUIREMENTS**

**ENVIRONMENTAL DETERMINATION:** The proposed action is not a project as defined by 14 California Code of Regulations 15378 (California Environmental Quality Act (CEQA) Guidelines) and therefore CEQA is not applicable.

## **BACKGROUND AND DISCUSSION**

In March 2016 NVTA staff requested authorization from the NVTA board to purchase a Wi-Fi system for the Vine fleet. NVTA’s computer aided dispatch (CAD) and automated vehicle location (AVL) system provider, AVAILTechnologies, installed the turn-key service on 36 vehicles at that time. The original purchase totaled \$288,754.

Upgrades to meet Verizon network requirements are necessary or WiFi service will be discontinued on Vine buses.

**SUPPORTING DOCUMENTS**

- Attachments (1) Draft Purchase Order # 19-1013  
(2) Avail Agreement No. 14-21  
(3) Avail Agreement No. 14-21 Amendment 2



DRAFT

# Purchase

Napa Valley  
Transportation  
Authority  
625 Burnell Street  
Napa, CA 94559

Phone: 707-259-8631  
Fax: 707-259-8638  
www.nvta.ca.gov

**VENDOR**

AVAIL Technologies Inc.  
1960 Gatesburg Road, Suite 200  
State College, PA 16803  
P: Amanda Hinchberger  
T: 814.234.3394x1066  
E: ahinchberger@availtec.com

**Purchase Order #: 19-1013**  
**Date:** 06/21/2019  
**Vendor ID: 37134**

**Bill To:**

Napa Valley Transportation  
Authority (NVTA)  
ATTN: Accounts Payable  
625 Burnell Street  
Napa, CA 94559-2912

**Ship To:**

NVTA  
625 Burnell Street  
Napa, CA 94559  
P Matthew Wilcox, Transit Manager  
T 707.259.8635 E mwilcox@nvta.ca.gov

Requested By	Ship Date	Ship Via	FOB	Buyer	Terms	Tax ID
WILCOX	N/A	N/A	DEST	KULICK	NET 30	68-0471080

QTY	Item #	Units	Description	Discount	Taxable	Unit Price	Total
			<b>4G MODEM UPGRADE - for Vine Transit Fleet , incl. equipment and services as per attached cost proposal dated 5/23/19 (Page 4)</b>				<b>\$217,301.29</b>
			<b>CONT ON PAGE 2 OF 7 )</b>				
						<b>Subtotal</b>	<b>\$217,301.29</b>
						<b>Tax 7.75%</b>	<b>\$16,840.85</b>
						-/-	
						-/-	
						<b>TOTAL</b>	<b>\$234,142.14</b>

**THIS ORDER WILL BECOME VALID UPON RECEIPT OF VENDOR ACCEPTANCE.**

**VENDOR ACCEPTANCE**

Vendor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) contract/purchase order, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. *(Attachments are listed herein.)*

**ORDER AWARDED AND ISSUED BY**

Individual listed below is hereby authorized to award ordered material/services as specified, or incorporated by reference herein, on behalf of the Napa County Transportation and Planning Agency.

\_\_\_\_\_  
NAME AND TITLE  
*(Signature of person authorized to sign)*

\_\_\_\_\_  
DATE

\_\_\_\_\_  
KATE MILLER, Executive Director  
*(Signature of person authorized to sign)*

\_\_\_\_\_  
DATE

**FOR INTERNAL USE ONLY**

FUND APPROPRIATION: TDA 8300 8309000 52500 PROG 13837 PUB\_TRANSIT TRANS CAPITAL STATE 8310

QTY	DESCRIPTION	UNIT COST	TOTAL
	Vine transit fleet vehicles are to receive a wireless communication system upgrade from its current standard to the latest available 4G LTE capability. This will require the replacement of all currently installed modems with new equipment. Services will include all equipment, material, hardware, software, testing, set-up, configuration, and labor needed for a fully functional wireless communication system and completion of the project, warranty and maintenance support services of all installed equipment.		
	<b>Material</b>		
45	MGR Modem (42 + 3 spare)	\$ 2,694.45 ea	\$ 121,250.25
8	RV50 Modems (7 + 1 spare)	\$ 973.88 ea	\$ 7,791.04
	Cabling (needed for cradlepoint transfer from FR to PT)	\$ 6,833.00	\$ 6,833.00
	<b>Services</b>		
	Setup, configuration, testing of all equipment (incl. modems)	\$ 26,086.00	\$ 26,086.00
	Installation of all equipment (incl. modems)	\$ 49,432.00	\$ 49,432.00
	Warranty, Maintenance and Support Services (through July 31, 2021)	\$ 5,909.00	\$ 5,909.00
	SUBTOTAL		\$ 217,301.29
	SALES TAX - NAPA - 7.75%		\$ 16,840.85
	<b>TOTAL</b>		<b>\$ 234,142.14</b>

**Milestone Stone/Progress Payments**

Contractor shall submit an invoice for each payment due (Net 30).

25% Receipt of Order

50% Ordering of Equipment

25% Upon Completion of Installation (acceptance of work)

**CONTINUED ON PAGE 4 OF 7**

## TERMS AND CONDITIONS

### 1. Compensation.

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, NVTA shall pay CONTRACTOR not to exceed the total amount shown on page 1 (**\$234,142.14**).

(b) Expenses. No travel or other expenses will be reimbursed.

### 2. Method of Payment.

(a) Invoices. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to NVTA of an itemized billing invoice which indicates CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or task completed.

3. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. NVTA shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

4. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide NVTA with certification of all such coverages upon request by NVTA's Risk Manager.

(b) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence.

(c) Certificates. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of NVTA's Risk Manager, demonstrated by other evidence of coverage acceptable to NVTA's Risk Manager, which shall be filed by CONTRACTOR with the Executive Director prior to commencement of performance of any of CONTRACTOR's duties.

### 5. Hold Harmless/Defense/Indemnification.

(a) In General. To the full extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify NVTA and the officers, agents, employees and volunteers of NVTA from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of NVTA or its officers, agents, employees, volunteers, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law if requested by the NVTA. Notwithstanding anything to the

contrary in this Paragraph, CONTRACTOR shall hold NVTA and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

6. **Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party by giving at least ten(10) days prior to the effective date.

7. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person (by e-mail) or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested.

8. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties.

9. **Interpretation; Venue.** The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court.

10. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes.

11. **Authority to Contract.** CONTRACTOR and NVTA each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

12. **Covenant of No Undisclosed Conflict.** The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. By executing this Agreement, the Executive Director hereby determines in writing on behalf of NVTA that CONTRACTOR has been hired to perform a range of duties so limited in scope as to not be required to comply with such disclosure obligation.

13. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

14. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

**From:** [Amanda Hinchberger](#)  
**To:** [Kulick, Renee](#)  
**Cc:** [Wilcox, Matt](#); [Onorato, Antonio](#); [Jeff Pogue](#)  
**Subject:** RE: 4G Conversion Quote  
**Date:** Monday, June 24, 2019 5:21:59 AM  
**Attachments:** [image003.png](#)

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Renee,

The **cost proposal is extended to be valid until July 31, 2019**. You can use this email as confirmation.

Best

**Amanda Hinchberger**

P: (814) 234-3394, ext. 1066

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**From:** Kulick, Renee <[rkulick@nvta.ca.gov](mailto:rkulick@nvta.ca.gov)>  
**Sent:** Friday, June 21, 2019 4:20 PM  
**To:** Amanda Hinchberger <[ahinchberger@availtec.com](mailto:ahinchberger@availtec.com)>  
**Cc:** Wilcox, Matt <[mwilcox@nvta.ca.gov](mailto:mwilcox@nvta.ca.gov)>; Onorato, Antonio <[aonorato@nvta.ca.gov](mailto:aonorato@nvta.ca.gov)>  
**Subject:** FW: 4G Conversion Quote

Good afternoon Amanda –

We are currently in the process of compiling the agreement/PO for the quoted Napa 4G Upgrade to be placed before our Board on July 17<sup>th</sup> for approval. In the process we noticed that your cost proposal is only valid through June 23, 2019. If the cost proposal is to remain valid past said date, could you please confirm this in writing?

Your assistance is greatly appreciated.

Best regards,

Renée Y. Kulick

Administrative Technician



625 Burnell Street Napa, CA 94559

T: [707-259-8780](tel:707-259-8780)

F: [707-259-8638](tel:707-259-8638)

E: [rkulick@nvta.ca.gov](mailto:rkulick@nvta.ca.gov)

[nvta.ca.gov](http://nvta.ca.gov) | [vinetransit.com](http://vinetransit.com)

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**From:** Amanda Hinchberger <[ahinchberger@availtec.com](mailto:ahinchberger@availtec.com)>

**Sent:** Thursday, May 23, 2019 1:20 PM  
**To:** Wilcox, Matt <[mwilcox@nvta.ca.gov](mailto:mwilcox@nvta.ca.gov)>  
**Cc:** Dietter Aragon <[daragon@availtec.com](mailto:daragon@availtec.com)>  
**Subject:** 4G Conversion Quote

Matt,

I have attached a revised 4G conversion quote with the current date per our discussion. As I mentioned on the phone, the sooner we can get some form of official commitment (either a signed offer letter or PO), the sooner we can get this rolling as we are nearing the 6-month mark in time left to complete this. Please let me know if you have any questions or concerns. I look forward to working with in the future

Have a great weekend

**Amanda Hinchberger**

1960 Old Gatesburg Road, Suite 200  
State College, PA 16803

E: [ahinchberger@availtec.com](mailto:ahinchberger@availtec.com)

P: (814) 234-3394, ext. 1066

F: (814) 234-3393

[www.availTec.com](http://www.availTec.com)



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Customer Add-on Request (CAR) – Offer Letter

May 23, 2019

Matthew Wilcox  
Transit Manager  
Napa Valley Transportation Authority (NVTA)  
625 Burnell St  
Napa, CA 94559



**Re: CAR Request –4G Modem upgrade**

Dear Mr. Wilcox,

Thank you for your continued interest in Avail Technologies as your ITS equipment and services provider. Napa Valley Transportation Authority (NVTA) is a valued customer / partner, and we appreciate the opportunity to partner with you to enhance your operational ITS environment. Per your request, Avail has provided pricing information and assumptions for the deployment of the following features, equipment, and support services.

This offer shall remain valid for **30 days** from the date of this offer, or until June 23, 2019. Should you have any questions or would like to discuss these options in more detail, we would be happy to do that. Please feel free to contact me, at (814) 234-3394 ext. 1066 or email at [ahinchberger@availtec.com](mailto:ahinchberger@availtec.com). We appreciate this opportunity and look forward to speaking with you soon.

Respectfully,

Amanda R Hinchberger  
Proposal Support Specialist

## 1 PRICE PROPOSAL & DELIVERABLES

Item Description	Price
<b>Design Effort</b>	
MGR Modems (Fixed Route) 42, 3 spares	\$121,250
RV50 Modems (supervisors) 7, 1 spare	\$ 7,791
Cabling (for cradlepoint transfer from FR to PT)	\$ 6,833
Setup, Configuration, Testing (all modems)	\$ 26,086
Installation (all modems)	\$ 49,432
Warranty & Support (aligned with current contract)	\$ 5,909
<b>GRAND TOTAL</b>	<b>\$217,301</b>

## 2 SUPPORT & WARRANTY

Support and warranty for this effort has been aligned to the maintenance and support agree current in effect and set to expire July 31,2021.

## 3 DELIVERY SCHEDULE

Upon receipt of a P.O., Avail will work with Napa Valley Transportation Authority (NVTA) to plan and schedule the implementation of the selected option of replacement modems.

## 4 PRICE & PAYMENT TERMS

To execute this request, please forward your Purchase Order electronically to [contracts@availtec.com](mailto:contracts@availtec.com).

Avail shall invoice Napa Valley Transportation Authority (NVTA) as follows, with payment due Net 30:


- 25% Receipt of PO
- 50% Ordering of Equipment
- 25% Completion of Installations

## 5 APPROVALS

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Napa Valley Transportation Authority (NVTA)

Date

  
 Jeffrey B. Pogue  
 Chief Financial Officer  
 Avail Technologies, Inc.

5/23/19

Date

**NAPA COUNTY TRANSPORTATION AND PLANNING AGENCY (NCTPA)**

**AGREEMENT NO. NCTPA 14-21**

THIS AGREEMENT is made and entered into as of this 1st day of December, 2014, by and between the Napa County Transportation and Planning Agency, a joint powers agency under the laws of the State of California, hereinafter referred to as "NCTPA", and **Avail Technologies, Inc.** whose mailing address is **1960 Old Gatesburg Road, Suite 200, State College, PA 16803**, hereinafter referred to as "CONTRACTOR";

**RECITALS**

**WHEREAS**, NCTPA wishes to purchase and implement Computer Aided Dispatch (CAD) and Automated Vehicle Location (AVL) system for its transit operations; and

**WHEREAS**, NCTPA has authorized the NCTPA Executive Director to enter into a contract for services at its November 19, 2014 meeting; and

**WHEREAS**, CONTRACTOR is willing and has been determined to be qualified to provide such specialized services to NCTPA under the terms and conditions set forth herein;

**TERMS**

**NOW, THEREFORE**, NCTPA hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve NCTPA in accordance with the terms and conditions set forth herein:

**1. Term of the Agreement.**

(a) The term of this Agreement shall commence on the date first above written and **shall expire on December 31, 2017**, unless earlier terminated as provided herein, except that the obligations of the parties under "Insurance" and "Indemnification" shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to NCTPA shall also continue after said expiration date or early termination in relation to the obligations prescribed by "Confidentiality," "Taxes," and "Access to Records/Retention)".

(b) The term of this Agreement shall be to the date shown above with an option for two (2) one (1) year terms subject to review and recommendation of NCTPA, and the satisfactory negotiation of terms.

2. **Scope of Services.** CONTRACTOR shall provide NCTPA those services set forth in CONTRACTOR's proposal (EXHIBIT A), attached hereto and incorporated by reference herein. EXHIBIT A is provided solely to describe the services to be provided. Any terms contained in EXHIBIT A that add to, vary or conflict with the terms of this Agreement are null and void.

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, NCTPA shall pay CONTRACTOR at the rate set forth in EXHIBIT B, attached hereto and incorporated by reference herein.

(b) Expenses. Unless explicitly agreed in writing, no direct expenses, including travel or other expenses, will be reimbursed by NCTPA.

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of **\$2,709,249.53** for equipment, software, professional services and expenses; provided however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered.

4. **Method of Payment.**

(a) Invoices. All payments for compensation shall be made only upon presentation by CONTRACTOR to NCTPA of an itemized billing invoice in a form acceptable to the NCTPA Manager of Finance which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. CONTRACTOR shall submit invoices not more often than every 30 days to NCTPA Accounts Payable who, after review and approval as to form and content, shall submit the invoice to the NCTPA Manager of Finance no later than fifteen (15) calendar days following receipt.

(b) Legal status. So that NCTPA may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be maintained on file with the Secretary of NCTPA's Board of Directors at all times during the term of this Agreement in a form satisfactory to the NCTPA Manager of Finance. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, NCTPA employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that NCTPA may monitor the work performed by CONTRACTOR. NCTPA shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, NCTPA, in addition to any other rights or remedies which NCTPA may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation insurance. CONTRACTOR will provide workers' compensation insurance as required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of the CONTRACTOR's duties under this Agreement; including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide NCTPA with certification of all such coverage's upon request by NCTPA's Risk Manager.

(b) Liability insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverage's, issued by a company licensed (admitted) to transact business in the State of California and/or having a A.M. Best rating of A VII or better:

1. General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement.

2. Professional Liability/Errors and Omissions. Professional liability/errors and omissions insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim.

3. Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence.

(c) Certificates. All insurance coverage's referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of NCTPA's Risk Manager, demonstrated by other evidence of coverage acceptable to NCTPA's Risk Manager, which shall be filed by CONTRACTOR with NCTPA's Deputy Executive Director prior to commencement of performance of any of CONTRACTOR's duties; shall be kept current during the term of this Agreement; shall provide that NCTPA shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability. For the commercial general liability insurance coverage referenced in 7(b)(1) and, where the vehicles are covered by a commercial policy rather than a personal policy, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming NCTPA, its officers, employees, agents and volunteers as additional insureds and waiving subrogation, and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement then the limits in the applicable certificate relating to the additional insured coverage of NCTPA shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to NCTPA with respect to any insurance or self-insurance programs maintained by NCTPA. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by NCTPA's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, NCTPA's Risk Manager, which approval shall not be denied unless the NCTPA's Risk Manager determines that the deductibles

or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by NCTPA's Risk Manager if it is determined that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects NCTPA, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

8. **Hold Harmless/Defense/Indemnification.** To the fullest extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify NCTPA and the officers, agents, employees and volunteers of NCTPA from and against any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of NCTPA or its officers, agents, employees, volunteers, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

9. **Employee Character and Fitness.** CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR, shall hold NCTPA and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

10. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within 20 days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving 10 days written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). NCTPA hereby authorizes the NCTPA Executive Director to make all decisions and take all actions required under this Paragraph to terminate the Agreement on behalf of NCTPA for cause.

11. **Termination for Convenience.** This Agreement may be terminated by NCTPA for any reason and at any time by giving no less than 30 days written notice of such termination and specifying the effective date thereof. NCTPA hereby authorizes the

NCTPA Executive Director to make all decisions and take all actions required under this Paragraph to terminate the Agreement on behalf of NCTPA.

**12. Disposition of, Title to and Payment for Work upon Expiration or Termination.**

(a) Upon expiration of this Agreement or earlier termination of Agreement, all finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of NCTPA, the property of and shall be promptly returned to NCTPA, although CONTRACTOR may retain a copy of such work for its personal records only. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only NCTPA shall be entitled to claim or apply for the copyright or patent thereof.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to receipt of the notice of termination or commenced prior to receipt of the notice and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to NCTPA for damages sustained by NCTPA by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or was otherwise terminated, and NCTPA may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to NCTPA from CONTRACTOR is determined.

**13. No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

**14. Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

NCTPA  
Kate Miller  
Executive Director  
625 Burnell Street  
Napa, CA 94559

CONTRACTOR  
Jeffrey Pogue  
Vice President  
1960 Old Gatesburg Road, Suite 200  
State College, PA 16803-2241

**15. Compliance with NCTPA Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and



require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Board Secretary of NCTPA and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by NCTPA employees or contractors.

(a) NCTPA Policy for Maintaining a Harassment Free Work Environment effective June 18, 2008.

(b) NCTPA Drug and Alcohol Policy adopted by resolution of the Board of Directors on July 25, 2008.

(c) Napa County Information Technology Use and Security Policy adopted by resolution of the Napa County Board of Supervisors on April 17, 2001. To this end, all employees and subcontractor's of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the NCTPA computer network shall sign and have on file with NCTPA prior to receiving such access the certification attached to said Policy.

(d) NCTPA System Safety Program Plan adopted by resolution of the Board of Directors on July 25, 2008.

16. **Confidentiality.** Confidential information is defined as all information disclosed to CONTRACTOR which relates to NCTPA's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of NCTPA, expressed through its Executive Director. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to NCTPA all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by NCTPA.

17. **No Assignments or Subcontracts.**

(a) A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of NCTPA, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for NCTPA to withhold its consent to assignment. For purposes of this subparagraph, the consent of NCTPA may be given by its Executive Director.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

18. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing signed by both Parties. In particular, only NCTPA, through its Board of Directors in the form of an amendment of this Agreement, may authorize extra and/or changed work beyond the scope of services prescribed by EXHIBIT A. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

19. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

20. **Compliance with Laws.** CONTRACTOR shall observe and comply with all currently applicable Federal, State and local laws, ordinances, and codes, including but not limited to the Federal laws contained in Attachment 1, and as amended from time to time. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractor's shall not deny the benefits thereof to any person on the basis of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), nor shall they discriminate unlawfully against any employee or applicant for employment because of sex, race, color, ancestry, religion or religious creed, national origin or ethnic

group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), or use of family care leave. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated there under (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of NCTPA by the State of California pursuant to Agreement between NCTPA and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractor's shall give written notice of their obligations there under to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to NCTPA for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party; CONTRACTOR shall include all of the provisions of this Section, and any applicable Federal provisions contained in Attachment 1 in all such subcontracts as obligations of the subcontractor.

(d) Federal Required Clauses. Notwithstanding anything to the contrary in this Agreement, pursuant to 29 C.F.R. 97.36(i), CONTRACTOR is hereby notified of, and shall comply with the requirements and regulations imposed by the Federal Transit Administration for federally funded contracts, to the extent they are applicable to the services to be provided under this Agreement, and as set forth in Attachment 1, attached hereto and incorporated herein by reference.

(e) Federal Changes. CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Request for Proposal for Computer

Aided Dispatch (CAD) and Automated Vehicle Location (AVL) System released on May 8, 2014 and Attachment 1, and the Master Agreement between NCTPA and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTOR's failure to so comply shall constitute a material breach of this contract.

(f) No Obligation by the Federal Government.

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

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

(g) Disadvantaged Business Enterprises.

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs if CONTRACTOR intends to engage any subcontractors.

(h) Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All relevant contractual provisions required by DOT, as set forth in FTA Circular 4220.1F shall be compiled by the parties. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

21. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold NCTPA harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that NCTPA is audited for compliance regarding any withholding or other applicable taxes or amounts,

CONTRACTOR agrees to furnish NCTPA with proof of payment of taxes or withholdings on those earnings.

22. **Access to Records/Retention.** NCTPA, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after NCTPA makes final payment for any other work authorized hereunder and all pending matters are closed, whichever is later.

23. **Authority to Contract.** CONTRACTOR and NCTPA each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

24. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to NCTPA and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as NCTPA may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of NCTPA relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, NCTPA may terminate this Agreement immediately upon giving written notice without further obligation by NCTPA to CONTRACTOR under this Agreement.

(c) Statements of Economic Interest. CONTRACTOR acknowledges and understands that NCTPA has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless the NCTPA Executive Director has determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation. CONTRACTOR agrees to timely comply with all filing obligations for a consultant under NCTPA's Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

25. **Non-Solicitation of Employees.** Each party agrees not to solicit for employment the employees of the other party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the other party, except that nothing in this Paragraph shall preclude NCTPA from publishing or otherwise distributing applications and information regarding NCTPA job openings where such publication or distribution is directed to the general public.

26. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

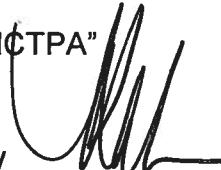
27. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.


28. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.


29. **Entirety of Contract.** This Agreement constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

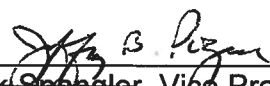

30. **Extensions Authorized.** The Executive Director is delegated authority to execute amendments to extend the term of this Agreement, if needed from time to time.

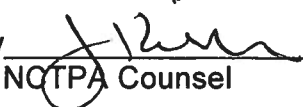
**IN WITNESS WHEREOF**, this Agreement was executed by the parties hereto as of the date first above written.

"NCTPA"  
  
By \_\_\_\_\_  
Kate Miller, Executive Director

"CONTRACTOR"  
Avail Technologies, Inc.  
  
By \_\_\_\_\_  
Dorsey E. Houtz, President and CEO

ATTEST:  
By   
Karalyn E. Sanderlin, Board Secretary

By   
G. Rick Spangler, Vice President  


Approved as to Form:  
By   
NCTPA Counsel

# ATTACHMENT 1 FEDERAL CONTRACT REQUIREMENTS

## 1. AMENDMENTS

Any changes in the activities to be performed under this Agreement shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the NCTPA Executive Director or a designates representative and CONTRACTOR. No claim for additional compensation or extension of time shall be recognized unless contained in a duly executed amendment.

## 2. TERMINATION

Contractor's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, acts of God, governmental restrictions, power failures, or damage or destruction of any network facilities or servers, shall not be deemed a breach of this Agreement, and may be cause for termination of the Agreement.

## 3. RETENTION OF RECORDS

Contractor agrees to keep, in accordance with generally accepted accounting principles, all records pertaining to the project for audit purposes for a minimum of three (3) years following final payment to Contractor or four (4) years following the fiscal year of the last expenditure under this Agreement, whichever is longer, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until NCTPA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

## 4. AUDITS

Contractor agrees to grant NCTPA or any agency that provides NCTPA with funds for the Project, including but not limited to, the U.S. Department of Transportation, FTA, the Comptroller General of the United States, the State, and their authorized representatives access to Contractor's books and records for the purpose of verifying that funds are properly accounted for and proceeds are expended in accordance with the terms of the Agreement. All documents shall be available for inspection during normal business hours at any time while the Project is underway, and for the retention period specified herein.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

Contractor further agrees to include in all its third-party contracts hereunder a provision to the effect that the contractor agrees that NCTPA, the U.S. Department of Transportation, FTA, the Comptroller General of the United

States, the State, or any of their duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, during normal business hours, for the term specified above. The term "contract" as used in this clause excludes agreements not exceeding \$25,000.

## 5. PATENT AND RIGHTS IN DATA

**A. Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

## ATTACHMENT 1 FEDERAL CONTRACT REQUIREMENTS

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**B. Patent Rights** - This following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

### 6. EQUAL EMPLOYMENT OPPORTUNITY/ CIVIL RIGHTS

In accordance with Title VI of the Civil Rights Act, as amended (42 U.S.C. § 2000d); Section 303 of the Age



## ATTACHMENT 1 FEDERAL CONTRACT REQUIREMENTS

Discrimination Act of 1975, as amended (42 U.S.C. § 6102); Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132; and 49 U.S.C. § 5332 for federally funded projects, Contractor agrees that it will not, on the grounds of race, religious creed, color, national origin, age, physical disability, or sex, discriminate or permit discrimination against any employee or applicant for employment

### 7. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Napa County Transportation and Planning Agency to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of 10 percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

The 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 Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 15 days from the receipt of each payment the prime contract receives from NCTPA. The prime contractor agrees further to return retainage payments to each subcontractor within thirty days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause

following written approval of the NCTPA. This clause applies to both DBE and non-DBE subcontracts.

Failure to comply with the terms of this provision may result in any or all of the following actions including but not limited to:

1. A finding of material breach of contract
2. Suspension of payment of invoices
3. Bringing to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties result) provided in 26.109.

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26. Forms 1 and 2 should be provided as part of the solicitation documents.

### 8. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

In the event that this project is funded by FTA in whole or in part, all contractual provisions required by DOT, as set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NCTPA requests which would cause NCTPA to be in violation of the FTA terms and conditions.

### 9. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES (Reserved)

### 10. STATE ENERGY CONSERVATION PLAN

Contractor shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321)

### 12. CLEAN AIR AND WATER POLLUTION ACTS

Contractor agrees to comply with the applicable requirements of all standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Clean Water Act (33 U.S.C. § 1251 *et seq.*), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). The Contractor agrees to report each violation to NCTPA and understands and agrees that NCTPA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include

## ATTACHMENT 1 FEDERAL CONTRACT REQUIREMENTS

these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance.

### 13. LOBBYING

Contractor agrees to comply with the restrictions on the use of federal funds for lobbying activities set forth in 31 U.S.C. § 1352 and 49 CFR Part 20. In addition, in the event the Agreement exceeds \$100,000, Contractor agrees to comply with the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 and shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each proposal or offer exceeding \$100,000).

### 14. INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify NCTPA and the officers, agents, employees and volunteers of NCTPA from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, from claims that to the extent they arise out of, pertain to, or relate to the negligent acts or omissions of Contractor or its officers, agents, employees, volunteers, contractors and subcontractors in rendering professional services under this Agreement which constitute negligence, recklessness, or willful misconduct, excluding, however, such liability, claims, losses, damages or expenses arising from the negligence or willful acts of NCTPA or its officers, agents, employees or volunteers or any third parties. Notwithstanding the foregoing, the parties agree that Contractor's obligation to defend the NCTPA is solely limited to reimbursing NCTPA for its reasonable costs for defending a claim including reasonable attorney's fee, incurred by NCTPA which are ultimately determined to be due to Contractor's negligence, recklessness or willful misconduct. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement.

### 15. COMPLIANCE WITH LAWS

Contractor shall comply with any and all laws, statutes, ordinances, rules, regulations, and requirements of the federal, state or local government, and any agency thereof, including, but not limited to NCTPA, the U.S. DOT and FTA, which relate to or in any manner affect the performance of this Agreement. Those law, statutes, ordinances, rules, regulations, and procedural requirements that are imposed on NCTPA as a Recipient of federal or state funds are hereby in turn imposed on Contractor (including, but not limited to, 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"), and are herein incorporated by this reference and made a part hereof.

### 20. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

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

### 21. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACT

(a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance

## ATTACHMENT 1 FEDERAL CONTRACT REQUIREMENTS

originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate. (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## NAPA Vine PRICE PROPOSAL

*Revised 9/25/2014 per Contract Negotiations*

NO.	ITEM DESCRIPTION	UNIT	QTY.	UNIT PRICE	EXTENDED PRICE
<b>BASE PRICE ITEMS</b>					
1	System Design	LS	1	\$ 187,787.37	\$ 187,787.37
2	CAD/AVL System Software and Licensing	LS	1	\$ 60,407.28	\$ 60,407.28
3	Hosted Servers (project term plus 5 years)	LS	1	\$ 98,866.02	\$ 98,866.02
4	Workstations at Dispatch and Administrative offices	EA	3	\$ 2,036.39	\$ 6,109.18
5	Scheduling Software Interface to Veolia	EA	1	\$ 47,279.18	\$ 47,279.18
6	On Board Equipment (Fixed Route)	EA	40	\$ 10,352.33	\$ 414,093.28
7	On Board Equipment (Paratransit)	EA	29	\$ 3,726.42	\$ 108,066.19
8	On Board Equipment (Supervisor Vehicles)	EA	6	\$ 2,982.49	\$ 17,894.95
9	Communications System for Mobile Devices – at Dispatch	LS	1	\$ 10,697.85	\$ 10,697.85
10	Mobile Communications Equipment - fixed, paratransit, supervisor vehicles	EA	75	\$ 1,054.22	\$ 79,066.33
11	Cellular (3G/4G) Service (5 years)	LS	1	\$ 75,365.19	\$ 75,365.19
12	Testing	LS	1	\$ 73,195.06	\$ 73,195.06
13	Maintenance Service Agreement (Years 2-5, Year 1 is included)	LS	1	\$ 341,580.47	\$ 341,580.47
14	Training	LS	1	\$ 23,255.92	\$ 23,255.92
15	511 Integration	LS	1	Included	\$ -
16	Connection Protection	EA	40	Included	\$ -
17	Data Management System	LS	1	\$ 4,166.67	\$ 4,166.67
18	Farebox Integration	EA	40	\$ 27.15	\$ 1,086.08
19	Mobile Work Stations for Supervisors	EA	1	\$ 3,461.87	\$ 3,461.87
20	Spare Vehicle Equipment Kit	EA	7	\$ 6,250.84	\$ 43,755.87
27	Real-time Bus Stop Sign	EA	20	\$ 14,212.51	\$ 284,250.22
30	Phone Interactive Voice Response System	LS	1	\$ 67,206.17	\$ 67,206.17
31	SMS texting fees and 321123 short code	LS	1	\$ 19,098.38	\$ 19,098.38
32	Clipper Integration	LS	1	\$ 45,626.78	\$ 45,626.78
33	Video System	LS	1	\$ 683,399.16	\$ 683,399.16
34	Automatic Vehicle Monitoring	EA	76	\$ 178.08	\$ 13,534.07
<b>TOTAL BASE PRICE:</b>					<b>\$ 2,709,249.53</b>

## NAPA Vine PAYMENT MILESTONES

*Revised 9/25/2014 per Contract Negotiations*

*Avail's proposed pricing is based on the following payment milestone schedule. Avail shall submit an invoice to NAPA Vine upon the successful completion of each milestone. Payment is due Net 30.*

Payment Milestone	Deliverables	Payment %	Payment Amount
Discovery / Kickoff	Discovery Visit Summary Baseline Project Schedule	5%	\$ 135,462.48
Planning / Requirements Review	Baseline Requirements Matrix Site Survey Summary Vehicle Survey Summary	10%	\$ 270,924.95
Configuration / Design Review	Preliminary Design Document Final Design Document Training Plan Installation Manuals	10%	\$ 270,924.95
Final Ordering of Equipment	Purchase Orders for Equipment	10%	\$ 270,924.95
Initial Assessment / FAT	Acceptance Test Plan FAT Test Procedures Customer-witnessed FAT FAT Test Results Documentation	15%	\$ 406,387.43
Pilot Equipment Delivery / Pilot	Pilot Test Procedures Delivery of Servers Delivery of Pilot Vehicle Equipment Pilot Test Pilot Test Results Documentation	15%	\$ 406,387.43
Equipment Delivery	Delivery of Vehicle Equipment Delivery of Spare Equipment	10%	\$ 270,924.95
Adoption / Rollout	Vehicle Installations 50% Complete	10%	\$ 270,924.95
Secondary Assessment / System Acceptance Test (SAT)	System Test Procedures Full System Test System Test Results Documentation Punch List and Closeout Plan	10%	\$ 270,924.95
Operational Improvement / 30-Day Test	Final System Documentation Final User Manuals	5%	\$ 135,462.48
<b>TOTAL</b>		<b>100%</b>	<b>\$ 2,709,249.53</b>



**SECOND AMENDMENT TO  
NAPA VALLEY TRANSPORTATION AUTHORITY ("NVTA")  
AGREEMENT NO. 14-21**

**THIS SECOND AMENDMENT ("AMENDMENT") TO NAPA VALLEY TRANSPORTATION AUTHORITY ("NVTA") AGREEMENT NO. 14-21** is made and entered into as of this 14th day of November, 2018 between the NAPA VALLEY TRANSPORTATION AUTHORITY (hereinafter referred to as "NVTA"), and AVAIL TECHNOLOGIES, INC. ("CONTRACTOR"), whose mailing address is 1960 Old Gatesburg Road, Suite 200, State College, PA 16803.

**RECITALS**

**WHEREAS**, in December 2014 NVTA contracted for specialized services to purchase and implement a Computer Aided Dispatch (CAD) and Automated Vehicle Location (AVL) system from CONTRACTOR for its transit operations pursuant to the Agreement No. 14-21 ("Agreement"); and

**WHEREAS**, the Agreement term was scheduled to expire in December 2017; and

**WHEREAS**, the Agreement was amended in December 2017 to extend the expiration of the Agreement until December 31, 2018;

**WHEREAS**, the parties desire to amend the Agreement to extend the term in order to provide CONTRACTOR with the opportunity to complete the services as set forth in the Agreement;

**WHEREAS** the remaining outstanding balance on the services to be rendered pursuant to the Agreement is \$63,152.04.

**TERMS**

**NOW, THEREFORE**, the NVTA and CONTRACTOR agree to amend the Agreement as follows:

1. Pursuant to Paragraph 1.(b) of the Agreement the parties are exercising the first one-year option to extend the term of the Agreement. The Agreement shall expire on December 31, 2019.
2. The Scope of Services shall be hereby amended as follows: Appendix E-1 Napa Vine Compliance Matrix, Section 5 – Scheduling System, Item 5.2 the scope of the scheduling system will be replaced in its entirety to read "The scheduling system shall also have the ability to import stop data from an external system in excel or comma separated value (CSV) file format or **HASTUS 2018** to incorporate any addition of stops by the agencies to the system in the future".

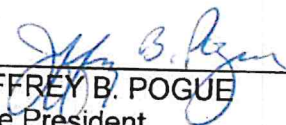
3. Except as set forth above, the terms and conditions of the Agreement shall remain in full force and effect as previously approved.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

"NVTA"

By   
KATE MILLER, Executive Director

"CONTRACTOR"  
AVAIL TECHNOLOGIES, INC.

By   
JEFFREY B. POGUE  
Vice President

ATTEST:

By   
KARALYN E. SANDERLIN  
NVTA Board Secretary

APPROVED AS TO FORM:

By   
DEEANNE GILLICK  
NVTA General Counsel