

LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY  
(LAVTA)

REQUEST FOR PROPOSALS

FOR

ON-CALL ZERO EMISSIONS BUS CONSULTING  
SERVICES #2016-04

LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY  
1362 Rutan Court, Suite 100  
Livermore, CA 94551

March 28, 2016

Key RFP Dates

<b>Date of Issuance:</b>	<b>March 28, 2016</b>
<b>Written Questions/Requests Due:</b>	<b>April 8, 2016 at 4:00 p.m.</b>
<b>Responses to Questions/Requests:</b>	<b>April 12, 2016</b>
<b>Proposals Due:</b>	<b>May 5, 2016 at 2:00 p.m.</b>
<b>Contract Award (estimated):</b>	<b>June 6, 2016</b>
<b>Contract Execution (estimated):</b>	<b>June 13, 2016</b>

Contact Information:  
Beverly Adamo, Director of Administrative Services  
(925) 455-7555  
[procurements@lavta.org](mailto:procurements@lavta.org)

March 28, 2016

**SUBJECT: NOTICE OF REQUEST FOR PROPOSALS  
ON-CALL ZERO EMISSIONS BUS CONSULTING SERVICES #2016-04**

The Livermore Amador Valley Transit Authority (LAVTA), operator of the Wheels bus system, is soliciting proposals from qualified firms to provide on-call consulting services for various LAVTA zero emissions bus (ZEB) projects.

All Questions and Requests for Clarification must be submitted in writing by April 8, 2016 at 4:00 p.m. Proposals must be received in the LAVTA Administrative Offices by 2:00 p.m. on May 5, 2016. **No proposals will be accepted after this time and date.** Any proposal or amendment to proposal received after the closing time will be returned unopened to the sender. Submission of a proposal shall constitute a firm offer to LAVTA. No Proposer may withdraw its proposal for a period of one hundred twenty (120) days after the opening of proposals. Each Proposer will be notified of award of contract, if award is made. LAVTA reserves the right to reject any and all proposals, or to waive any irregularities or informalities in any proposal or in the proposal procedure, or to postpone the proposal opening for good cause. LAVTA specifically reserves the right to not award a contract after the submittal of Proposals.

Proposers are directed to submit five (5) hard copies and one searchable (1) electronic copy on a CD or USB drive of their Technical Proposal in a separate sealed envelope; and one (1) hard copy and one (1) searchable electronic copy on a CD or USB drive of their Cost Proposal in a separate, sealed envelope and marked CONFIDENTIAL. Each Proposal shall be clearly marked indicating the Proposer's name and address, the solicitation name, and Proposal type (i.e., Technical or Cost).

Proposals shall be submitted to the following:

**Livermore Amador Valley Transit Authority  
1362 Rutan Court, Suite 100  
Livermore, CA 94551  
Attention: Beverly Adamo, Director of Administrative Services**

The contract awarded under this Request for Proposals (RFP) may be funded in whole or in part by the Federal Transit Administration (FTA). Full compliance with all Safety and Health Standards, Equal Employment Opportunity, and Americans with Disabilities Act laws and regulations will be required of the successful Proposer.

LAVTA hereby notifies all Offerors that it is the policy of LAVTA to ensure non-discrimination on the basis of race, color, sex or national origin in the award and administration of contracts that it awards. It is the intention of LAVTA to create a level playing field on which Disadvantaged Business Enterprises (DBEs) can compete fairly for contracts and subcontracts relating to LAVTA's construction, procurement and professional services activities. Offerors are urged to obtain DBE participation on this project, although there is no specific DBE contract goal. Offerors are encouraged to attend the pre-Proposal conference to better understand the applicable DBE requirements.

LAVTA intends for this procurement to be primarily conducted electronically via distribution on the procurement page of [www.wheelsbus.com](http://www.wheelsbus.com); however, upon request, copies of the RFP may be obtained by contacting LAVTA at (925) 455-7555.

/s/ *Beverly Adamo*

\_\_\_\_\_  
Beverly Adamo  
Director of Administrative Services  
Livermore Amador Valley Transit Authority

\_\_\_\_\_  
March 28, 2016  
Date

SECTION I

INSTRUCTIONS TO PROPOSERS

## **1.0 INSTRUCTIONS TO PROPOSERS**

### **1.1 Examination of Proposal Documents**

The work to be performed under this contract consists of the furnishing of all labor, insurance, materials, and equipment necessary to perform the requirements specified in the Scope of Work. By submitting a proposal, Proposer represents that it has thoroughly examined and become familiar with the work required under this RFP and that it is capable of performing quality work to achieve the Livermore Amador Valley Transit Authority's ("Authority" or "LAVTA") objectives.

### **1.2 Addenda**

Any Authority changes to the requirements will be made by written addendum to this RFP. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any resulting Agreement. The Authority will not be bound to any modifications to or deviations from the requirements set forth in this RFP as the result of oral instructions. Proposers shall acknowledge receipt of addenda in their proposals.

### **1.3 Authority Contact**

All questions and/or contacts with LAVTA staff regarding this RFP are to be directed to the Procurement Officer:

Beverly Adamo, Director of Administrative Services  
Livermore Amador Valley Transit Authority  
1362 Rutan Court, Suite 100  
Livermore, CA 94551  
Phone: (925) 455-7563

### **1.4 Pre-Proposal Conference**

LAVTA is not holding a Pre-Proposal Conference.

### **1.5 Questions and Requests for Clarification**

Should a Proposer have questions concerning or require clarifications of this RFP, the Proposer shall notify the Authority in writing. Should it be found that the point in question is not clearly and fully set forth, the Authority will issue a written addendum clarifying the matter, which will be posted on the agency's interactive website; [www.wheelsbus.com](http://www.wheelsbus.com).

### **Submitting Request**

- (a) All questions and/or requests for clarification must be put in writing and must be received by the Authority no later than 4:00 p.m. on April 8, 2016.
- (b) Requests for clarification, questions and comments must be clearly labeled, "Written Questions." The Authority is not responsible for failure to respond to a request that has not been labeled as such.
- (c) Any of the following methods of delivering written questions are acceptable as long as the questions are received no later than the date and time specified above:
  - (1) U.S. Mail: Livermore Amador Valley Transit Authority, 1362 Rutan Court, Suite 100, Livermore, CA 94551.
  - (2) Personal Courier: Director of Administrative Services, 1362 Rutan Court, Suite 100, Livermore, CA 94551.
  - (3) Facsimile: The Authority's fax number is (925) 443-1375.
  - (4) E-Mail: [procurements@lavta.org](mailto:procurements@lavta.org).

## 1.6 Authority Responses

Responses from the Authority will be posted on the Authority's website, [www.wheelsbus.com](http://www.wheelsbus.com) by April 12, 2016. LAVTA reserves the right to postpone this deadline for its own convenience.

## 1.7 Submission of Proposals

- (a) Date and Time - Proposals must be received in the LAVTA Administrative Offices at or before 2:00 p.m. on May 5, 2016. Proposals received after the above-specified date and time will be returned to Proposers unopened.
- (b) Address - Proposals shall be submitted to the following:

**Livermore Amador Valley Transit Authority  
1362 Rutan Court, Suite 100  
Livermore, CA 94551  
Attn: Beverly Adamo, Director of Administrative Services**

## 1.8 Identification of Proposals

Proposers shall submit five (5) hard copies and one searchable (1) electronic copy on a CD or USB drive of their Technical Proposal in a separate sealed envelope; and one (1) hard copy and one searchable (1) electronic copy on a CD or USB drive of their Cost Proposal in a separate, sealed envelope and marked CONFIDENTIAL. Each Proposal shall be clearly marked indicating the Proposer's name and address, the solicitation

name - “**LAVTA On-Call Zero Emissions Bus Consulting Services – RFP #2016-04**”, and Proposal type (i.e., Technical or Cost).

### **1.9 Acceptance of Proposals**

- (a) The Authority reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals or proposal procedures.
- (b) The Authority reserves the right to withdraw or cancel this RFP at any time without prior notice and the Authority makes no representations that any contract will be awarded to any Proposer responding to this RFP.
- (c) The Authority reserves the right to postpone proposal openings for its own convenience.
- (d) The Authority reserves the right to request additional information to clarify any proposal.

### **1.10 Pre-Contractual Expenses**

The Authority shall not, in any event, be liable for any pre-contractual expenses incurred by Proposer in the preparation of its proposal. Proposer shall not include any such expenses as part of its proposal.

Pre-contractual expenses are defined as expenses incurred by Proposer in:

- 1. Preparing its proposal in response to this RFP;
- 2. Submitting that proposal to the Authority;
- 3. Negotiating with the Authority on any matter related to this proposal; or
- 4. Any other expenses incurred by Proposer prior to date of award, if any of the Agreement.

### **1.11 Joint Offers**

Where two or more firms desire to submit a single proposal in response to this RFP, they should do so on a prime-subcontractor basis rather than as a joint venture. The Authority intends to contract with a single firm rather than with multiple firms doing business as a joint venture.

### **1.12 Protest Procedures**

Protests based upon the content of this Request for Proposals shall be filed in writing with Paul Matsuoka, LAVTA Executive Director, within ten (10) calendar days after the Request for Proposals is first advertised. The protest must clearly specify in writing the grounds and evidence on which the protest is based. LAVTA shall issue a written decision on the protest prior to the opening of proposals. A protest may be renewed by refileing the protest

within fifteen (15) calendar days after the mailing of the notice of the recommended award.

Any proposer may protest the recommended award on any ground not based upon the content of the Request for Proposals by filing a protest with Paul Matsuoka, LAVTA Executive Director, within fifteen (15) calendar days after the mailing of the notice of the recommended award. The protest must clearly specify in writing the grounds and evidence on which the protest is based. Protesters shall have an opportunity to appear and be heard before the board prior to final award of the contract.

Because this contract is federally funded, the District's final determination of protests may also be appealed to the FTA in accordance with the procedures set forth in FTA Circular 4220.1F, as may be periodically updated. FTA's review will be limited to protests alleging that the District failed to have or follow its written protest procedures, failed to review a complaint or protest, or violated a federal law or regulation. The protest must be received by the FTA within five working days of the date the protester learned or should have learned of an adverse decision by the District.

Copies of the complete proposal protest procedure are available at the office of the Authority.

### **1.13 Contract Type**

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be a time and expense contract specifying hourly rates, which will apply on a Task Order basis. At LAVTA's discretion, each Task Order will be compensated at either a firm-fixed-price (FFP) or cost-plus-fixed-fee (CPFF) basis.

SECTION II

SCOPE OF WORK



## SCOPE OF WORK

### ON-CALL ZERO EMISSIONS BUS CONSULTING SERVICES

#### 1. INTRODUCTION

##### 1.1. Request for Proposals

The Livermore Amador Valley Transit Authority (LAVTA) seeks the services of a qualified firm capable of providing on-call multi discipline research, development, design, and project management support services for various projects associated with Livermore Amador Valley Transit Authority's fleet management and transition to an all-electric and zero emissions buses (ZEB) in providing public transportation in Dublin, Pleasanton, Livermore, and areas of unincorporated Alameda County.

Respondents to this RFP must be able to provide all of the desired services for each of the items listed in the scope of work. LAVTA intends to award the on-call service contract to one firm, but reserves the right to award to multiple firms. There is no guarantee of work through this solicitation.

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

##### 1.2. Scope of Work

###### Background

LAVTA, which operating the *Wheels* system, provides fixed route, school tripper service, commuter express and Dial-A-Ride paratransit service to ADA eligible citizens in the cities of Dublin, Livermore, Pleasanton and adjacent unincorporated areas of Alameda County.

Funding for the system is provided by Federal, State and Alameda County sources. The seven-member LAVTA Board of Directors is responsible for the development of policy and oversight of LAVTA's services and programs.

Consulting services will be provided on an as-needed basis, through a Task Order on-call process. The Task Order process will consist of LAVTA contacting the Consultant and requesting services related to an individual project. The Consultant will then prepare a detailed scope, schedule and budget proposal for each individual Task Order. The Task Orders will be agreed upon in advance between LAVTA and the Consultant.

LAVTA's Director of Administrative Services will be the key contact for the Consultant and will direct the Consultant. The Consultant shall designate a point-of-contact (POC)

within the firm to coordinate all activities. The POC will be permanently assigned in this capacity for the duration of the contract period. The POC shall have the authority to make commitments and decisions that are binding on the Consultant. Any changes to Consultant's personnel under this project shall be subject to LAVTA's written approval.

#### Task Order Process

Task Orders will be initiated in accordance with the following procedure:

- LAVTA's Director of Administrative Services will issue a Task Order Proposal Request to Consultant, which will define the Scope of Work, deliverables and required schedule.
- Task Orders will be issued on a firm-fixed-price or cost plus fixed fee with ceiling compensation basis.
- Consultant will submit its Task Order Proposal to LAVTA's Director of Administrative Services within ten (10) days of receipt of the Task Order Proposal Request. The Task Order Proposal shall include the Consultant's understanding of the Scope of Work, deliverables and schedule and will include a cost proposal. Also included will be the names of the Consultant (and subconsultant) personnel proposed under the Task Order.
- LAVTA will review the Task Order Proposal for compliance with contractual requirements and will conduct a technical evaluation to ensure the Task Order Proposal is complete and is consistent with the Scope of Work, that personnel assigned are acceptable and that all costs proposed are appropriate.
- If required, LAVTA will conduct negotiations to address exceptions and costs identified in the Task Order Proposal. After negotiations, Consultant will submit a revised Task Order Proposal within ten (10) days.
- LAVTA will issue the Task Order within ten (10) days after receipt of an accepted Task Order Proposal.
- Services shall be performed under the direction of LAVTA's staff representative identified in the Task Order.

#### General

LAVTA is in the process of transitioning its fleet to zero-emission, all-electric transit vehicles and requires assistance in defining requirements for electric bus fleet and supporting charging equipment, which may include multiple en route charging stations and/or depot charging stations for overnight charging. The conceptual intent is that the "charging" infrastructure be "open" and capable of supporting buses of varying type / model, such that the system of buses and chargers would be scalable for future growth without proprietary constraint. The Consultant will assist LAVTA in developing technologies and implementing solutions to achieve energy and environmental sustainability.

The Consultant shall function with overall guidance from LAVTA staff, but will manage and control the day-to-day work directive activities and deliverables.

Services: Professional services to be provided by Consultant under the Agreement and individual Task Orders may include, but may not limited to, the following tasks and activities:

1. Write grant applications and/or proposals
2. Technical assistance in writing requests for proposals (RFP)
3. Technical assistance in the evaluation of proposals
4. Manage technology demonstrations
5. Advise on structural design and analysis
6. Project cost estimating

#### List of potential Task Order Assignments

Possible tasks that may be required of the Consultant in executing Task Order assignments include:

- Preparation and delivery of feasibility/cost studies
- Preparation of conceptual and project study reports
- Preparation of Plans, Specifications and Cost Estimates (PS&E)
- Project Controls activities, including cost estimate preparation and review, and schedule preparation and review
- Grants, Procurement and Project Management support services
- Review of contractor submittals

#### Detailed Scope of Services for Consultant

As assigned by individual Task Orders, Consultant will conduct categories of services including but not limited to:

##### **Project Planning and Initiation**

- Detailed planning to finalize the scope, approach, tasks, and timeline.

##### **Requirements Analysis**

- Route modeling and confirmation of technical specifications for bus and charging equipment
- With assistance of CEM and the local utility company, consultant will also develop a rate model to assess the operational cost of the electric bus under a variety of rate structures and operating conditions. Consultant will develop a life cycle cost analysis for electric bus of choice.

##### **Bus Procurement**

- Consultant will develop the scope, specifications, manufacturing work plan, inspection workplace, test plan and acceptance plan for purchase of electric buses. Consultant, with 3rd party inspector, will monitor the build and periodically inspect the buses. Consultant will assist transit agency in conducting pre-delivery inspection and approve buses for delivery.

### **Infrastructure Procurement, Design & Build**

- Consultant will develop RFP and evaluate submittals for architectural and engineering services, if needed, to design the infrastructure required to support on-route and maintenance center charging equipment.
- Once the design is accepted, consultant will oversee creation of the RFP or IFB for construction and installation services.
- Consultant will monitor the timeline for construction and work with project stake holders on coordination.
- When infrastructure is completed and charging equipment installed, consultant will facilitate coordination between transit agency and bus manufacturer for on-site commissioning of the equipment.

### **Public Relations & Outreach**

- Consultant will engage the public and promote the benefits of zero emission battery electric buses. Consultant will develop and execute a program to effectively communicate the impact of the project on community and the environment.

### **Bus & Infrastructure Deployment**

- Consultant will assist the transit agency in establishing and conducting a series of tests to validate the performance and operation of the buses.

### **Data Collection, Analysis and Reporting**

- Consultant will collect operational data points to measure and report actual energy savings and/or greenhouse gas emissions reductions from revenue service. Consultant will collect and analyze key performance indicators to validate performance of battery electric buses for grant compliance as well as to measure against other buses in the Transit Agency's fleet. Key performance indicators to include, but not be limited to, availability, on-time performance, energy consumption and costs, and maintenance costs.

### **Project Close out**

- After data collection period is over, consultant will issue a final report summarizing the project findings and results. Consultant will prepare information required for transit agency to close out project with FTA.

### **Example of Possible Forthcoming Work**

LAVTA is in the process of securing funding for zero emissions buses and supporting infrastructure. The award date is unknown at this time. Consultant activities associated with these projects may include the launch of LAVTA's new route in what will become the nation's first all-electric last mile solution. The line links bus commuters and riders in the Tri-Valley area of the San Francisco East Bay with two major rail lines – BART and the ACE train. The potential pilot project includes eight (8) 35' to 40' fast charge battery electric buses and supporting on route and depot charging stations. Six (6) buses will be dedicated for exclusive use on the new route. One fast charging station will be located at the East Dublin BART Station, and a second station will be placed at the Livermore Transit Center. Two (2) buses will be dedicated for a route providing services for ACE passengers to and from BART and will use the charging station located at the East Dublin BART Station. It is anticipated that to



any and all costs and expenses that may be incurred in securing said coverage or in fulfilling Consultant's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event Consultant or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the Consultant's insurance be primary without any right of contribution from the Authority. Prior to beginning work under this contract, Consultant shall provide the Authority with satisfactory evidence of compliance with the insurance requirements of this section.

**A. Minimum Types and Scope of Insurance**

**1.) Workers' Compensation and Employers' Liability Insurance**

- a. Workers' Compensation with Statutory Limits, as required by Section 3700 et seq of the California Labor Code, or any subsequent amendments or successor acts thereto governing the liability of employers to their employees.
- b. Employers' Liability coverage with minimum limits of \$1 million.
- c. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:
  - Waiver of Subrogation.

**2.) Commercial General Liability Insurance**

Commercial General Liability insurance for bodily injury and property damage coverage with a combined single limit for bodily injury and property damage of at least \$1 million per occurrence or claim and a general aggregate limit of at least \$2 million. Such insurance shall cover all of Consultant's operations both at and away from the project site.

- a. This insurance shall include coverage for, but not be limited to:
  - Premises and operations.
  - Products and completed operations.
  - Contractual liability.
  - Personal injury.
  - Advertising injury.
  - Explosion, collapse, and underground coverage (xcu).
  - Broad form property damage.
- b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
  - Additional Insured.
  - Cross Liability or Severability of Interests Clause.
  - Primary and Non-Contributory wording.
  - Waiver of Subrogation.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

**3.) Business Automobile Liability Insurance**

Business Automobile Liability insurance providing bodily injury and property damage with a combined single limit of at least \$1 million per occurrence.

a. This insurance shall include coverage for, but not be limited to:

- All Owned vehicles.
- Non-owned vehicles.
- Hired or rental vehicles.

b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

- Additional Insured.
- Primary and Non-Contributory wording.
- Waiver of Subrogation.

**4.) Professional Liability Insurance**

The Consultant, at its own cost and expense, shall maintain professional liability insurance for the period covered by the Agreement, and two years following completion of the contract in an amount not less than \$1,000,000 covering errors and omissions in the services of the Consultant performs under the Agreement. The policy limits of this professional liability insurance policy shall apply separately to the Agreement.

**B. ENDORSEMENTS**

**1.) Additional Insured**

The referenced policies and any Excess or Umbrella policies shall include as Additional Insureds the Livermore Amador Valley Transit Authority and its directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

**2.) Waiver of Subrogation**

The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of the Livermore Amador Valley Transit Authority and its officers, directors, employees, volunteers and agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

**3.) Primary Insurance**

The referenced policies and any Excess and Umbrella policies shall

indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by the Livermore Amador Valley Transit Authority.

**4.) Severability of Interests or Cross Liability**

The referenced policies and any Excess or Umbrella policies shall contain either a Cross Liability endorsement or Severability of Interests Clause and stipulate that inclusion of the Livermore Amador Valley Transit Authority as an Additional Insured shall not in any way affect Authority's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the Consultant. Said policy shall protect Consultant and the Livermore Amador Valley Transit Authority in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

**C. EVIDENCE OF INSURANCE**

**All Coverages**

Prior to commencing work or entering onto the Property, Consultant shall provide the Director, Contracts and Procurement of the Authority with a certificate evidencing coverage, and upon request, a certified duplicate original of the policy. The certificate shall also show that the Consultant's policy(ies) will not be cancelled or coverage altered without 30 days prior written notice to the Authority's Executive Director.

**D. GENERAL PROVISIONS**

**1.) Notice of Cancellation**

The policies shall provide that the Consultant's policies will not be cancelled or have limits reduced or coverage altered without 30 days prior written notice to the Authority's Executive Director.

**2.) Acceptable Insurers**

All policies will be issued by insurers acceptable to the Authority (generally with a Best's Rating of A- 10 or better).

**3.) Self-insurance**

Upon evidence of financial capacity satisfactory to the Authority and Consultant's agreement to waive subrogation against the Authority respecting any and all claims that may arise, Consultant's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.

**4.) Failure to Maintain Insurance**



All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of Consultant's personnel and equipment have been removed from the Authority property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

**5.) Claims Made Coverage**

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

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Consultant shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all named insureds.
- c. If insurance is terminated for any reason, Consultant agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from work performed in connection with this Agreement.
- d. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

**6.) Deductibles and Retentions**

Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from the Authority.

In the event that the policy of the Consultant or any subcontractor contains a deductible or self-insured retention, and in the event that LAVTA seeks coverage under such policy as an additional insured, Consultant shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of Consultant, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if Consultant or subcontractor is not a named defendant in the lawsuit.

**2.2 Confidentiality**

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

If the proposer believes any communication contains trade secrets or other proprietary information that the proposer believes would cause substantial injury to the proposer's competitive position if disclosed, the proposer shall request that Authority withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. The proposer may not designate its entire proposal or bid as confidential. Additionally, proposer may not designate its cost proposal or any required bid forms or certifications as confidential.

If proposer requests that Authority withhold from disclosure information identified as confidential, and Authority complies with the proposer's request, proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless Authority from and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the proposer information), and pay any and all costs and expenses related to the withholding of proposer information.

Proposer shall not make a claim, sue or maintain any legal action against Authority or its directors, officers, employees or agents in connection with the withholding from disclosure of proposer information.

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

### **2.3 Conflict of Interest**

Proposer represents and warrants that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code §§ 1090 et seq. or §§ 87100 et seq. during the performance of services under the Agreement. Proposer shall promptly disclose any actual or potential conflict of interest to Authority as soon as proposer becomes aware of such conflict. Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of the Agreement. Violation of this provision may result in the Agreement being deemed void and unenforceable.

No member, officer or employee of the Authority or of any of its member jurisdictions during his/her tenure of office, or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds therefrom.

SECTION III

PROPOSAL CONTENT

## **1.0 PROPOSAL CONTENT - TECHNICAL PROPOSAL**

### **1.1 Format**

The intent of this RFP is to encourage responses that clearly communicate the proposer's understanding of the scope of work and the proposer's approach to meet LAVTA's requirement for on-call engineering consulting services.

Proposals should be limited to specific discussion of the elements outlined in this RFP. Respondents are encouraged to avoid submissions that are poorly organized or in which important information is obscured by unnecessary promotional material. Short, succinct, and clear submittals are less likely to be marked down due to uncertainty as to meaning or misinterpretation. The Evaluation Committee will assume the most unfavorable interpretation when information is unclear, ambiguous, or missing. Respondents are encouraged to submit proposals that best address the evaluation criteria outlined in Section IV, Evaluation and Award, subsection 1.1.

The organization of each proposal should follow the general outline below. Proposals should not exceed fifty (50) pages in length, excluding any appendices. The page limit applies to Proposer's Qualifications, Experience and References and Technical Proposal section. Examples of previous work product may be submitted in print, PowerPoint presentation, video or compact disc. All sample materials will be available for return at respondent's request.

Technical Proposals shall be submitted as follows.

- Five (5) hard copies and one searchable (1) CD or USB.

Respondent's proposal shall include the following items in the following sequence:

### **1.2 Cover Form**

The signed cover form, provided in Appendix A, contains the following:

- a) Date submitted and complete name and address of person who will receive correspondence and who is authorized to make decisions or represent the Proposer and contractually bind the firm. This person shall also sign the Price Proposal Form (which shall be submitted in a separate sealed envelope, marked "Confidential"). Identification shall include legal name of company, corporate address, telephone and fax number and contact person during period of proposal evaluation.
- b) An understanding of the conditions under which the proposal is offered.

- c) Acknowledgement of receipt of all RFP addenda, if any. A statement to the effect that the proposal shall remain valid for a period of not less than one hundred twenty (120) days from the date of submittal.
- d) An understanding that LAVTA reserves the right to reject any or all Proposals or to waive any informality or technicality in any proposal in the interest of LAVTA.
- e) A statement that Proposer is prepared to sign the Sample Agreement without alterations or exceptions or whether it is requesting modifications to the Sample Agreement and/or any requirements of this RFP.
- f) A statement confirming the commitment of adequate resources to meet LAVTA's quality and schedule expectations.
- g) Signature of a person authorized to bind Proposer to the terms of the proposal.

### **1.3 Evidence of Ability to Provide Insurance**

Provide evidence in the form of a certificate of insurance or letter from Proposer's broker/agent that verifies the firm is able to meet the minimum insurance requirements as detailed in Section II – Scope of Work, subsection 2.1 including, workers' compensation insurance, commercial general liability insurance, automobile liability insurance and professional liability insurance.

### **1.4 Proposer's Qualifications, Experience and References**

The following information shall be included:

- a) Summary - A brief description of the Proposer's qualifications for furnishing the various desired consulting services, including the organization name, size and years in business.
- b) Firm Experience – This section should contain a concise description of the proposer's background and experience in providing multi discipline engineering, design, architectural and construction management support services to public transit sector similar to those outlined in the Scope of Work, listing at least three projects within the last three years (not including any projects completed for LAVTA). The information submitted should include:
  - Name, address, and telephone number of the responsible official of the organization
  - Cost of the contract
  - Dates services encompass
  - Services provided
  - The status of the contract

This section should provide examples of work on similar projects, including project scope, objectives and success or failure to achieve those goals. Projects in both the private and public sectors may be included.

- c) Experience of Key Personnel - Identify your proposed Project Manager, and other key personnel who will provide direct services to LAVTA, including such person's relevant job histories, professional credentials, if any, and related experience, especially in, but not limited to, working with public sector clients.
- d) Financial stability and history of the Proposer - Provide a statement of your firm's financial strength, stability, capacity, and resources. Company official reports and other similar materials (balance sheet and income statements, with 3-year summary history) should be provided. Provide information about the history of the firm, demonstrating viability of the firm.
  - o Identify any past (within last 3 years) or pending litigation against the Proposer alleging failure to perform in accordance with contractual obligations, and describe present status. If there is no such litigation, this must be explicitly stated.
  - o List any projects, which have resulted in time extensions and/or the assessment of liquidated damages against any member of the project team during the last five (5) years.

### **1.5 Technical Proposal**

On-Call Consulting Services - The following shall be included as a description of the proposed services to be provided by the Proposer under this contract:

- a) Demonstrate the Firm's approach to quality control, project management and product delivery.
- b) Conformance to the terms of the requirements of the RFP – The Proposer should describe if they can meet all the requirements of the RFP. Any deviation with the RFP requirements should be clearly identified and described. Failure to specify any exceptions or objection to the requirements, and terms and conditions of this RFP will constitute acceptance of LAVTA's requirements.
- c) Identification of any parts of the proposal the proposer considers proprietary and a written justification for the claim, fully supported by California case law and/or statutes.

### **1.6 Supporting Documentation**

Proposals may include other material that may assist in evaluating the Proposal. Supporting documentation should be relevant and brief.

### **1.7 Completed Required Forms (Provided in Appendix A)**

- o Certification Regarding Worker Compensation
- o Fair Employment Practice Certification
- o Certification Concerning Control of Employee
- o Lobbying Certification

## 2.0 PROPOSAL CONTENT - COST PROPOSAL

**(To be submitted in a separate sealed envelope marked "CONFIDENTIAL")**

One (1) original Cost Proposal and one (1) searchable electronic copy on a CD or USB drive shall be submitted in a sealed envelope separate from the Technical Proposals with the envelope identified as Confidential and "Cost Proposal" and include the Proposer's name on the outside of the envelope.

All Cost Proposal responses must include and address all of the sections listed below.

1. Consultant's Direct Labor Costs – Proposers shall include individual positions and include hourly salaries for each individual using the format contained in Appendix A, Consultant Actual Direct Hourly Salaries. The salaries shall be exclusive of any burden or markups. Proposers shall provide the same data for all proposed subconsultants, if any.
2. Consultant's Indirect Cost Rates (overhead) – Proposer shall submit Indirect Cost Rates for home office and dedicated field office using the format contained in Appendix A, Consultant Multiplier and Fee. In each case, Proposer shall identify cost elements contained within overhead rate pool. If it is Proposer's normal practice to show employee fringe benefits as a separate overhead rate on direct labor, then such practice shall be incorporated in the rates submitted.
3. Proposed Fees – Proposer shall submit proposed fees (profit) as a percentage of the overhead burdened Direct Cost for Labor using the format contained in Appendix A, Consultant Multiplier and Fee. The Consultant's maximum fee, as a percentage of fully burdened Direct Labor Cost, allowable by LAVTA shall not exceed 6%.
4. Consultant's most recent audit report – Proposer shall submit a copy of its most recent audit report (not older than 18 months) of Proposer's direct and indirect rates and shall state whether rates are consistent with Federal Cost Principles (Title 48, Code of Federal Regulations, Part 31). Audit shall have been conducted by the Federal Government, a Certified Public Accountant, or Independent Auditor. Identify the audit agency, contact name, phone number, and furnish copies of findings.

Respondent is expected to examine this RFP carefully, understand the terms and conditions for providing the products herein and respond completely. **FAILURE TO COMPLETE AND PROVIDE ANY OF THE ABOVE ITEMS MAY RESULT IN THE RESPONDENT'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.**

SECTION IV  
EVALUATION AND AWARD



## 1.0 EVALUATION AND AWARD

### 1.1 Evaluation Criteria

Subject to Section 1.3 below, the Authority intends to award a Contract to the most qualified, responsible firm submitting a responsive proposal. The Authority will evaluate the Proposals received based on the following criteria:

<b>Evaluation Criteria - % Weight (100% Best)</b>	<b>Scoring</b>
Complete and thorough conformance with the terms and requirements of this RFP (In your submittal, state if you have any exceptions to the requirements.)	Pass/Fail
<b>Proposer’s qualifications and experience:</b> Firm’s ability to provide multi discipline support services in accordance with the RFP requirements.	40 points
<b>Staffing and Project Organization:</b> Strengths, experience and qualifications of key personnel, particularly the Project Manager. Previous public transportation experience including on-call contract work.	35 points
<b>Work Approach to Scope of Services:</b> Firm’s approach to quality control, project management and product delivery.	15 points
<b>Overall completeness and quality of proposal:</b> Proposer understands LAVTA’s requirements as demonstrated by a comprehensive response to this RFP.	10 points
Total Points	100 points

### 1.2 Evaluation Procedure

To be considered for evaluation, all proposals must be responsive to this Request for Proposals with respect to required submissions and must be compliant with all provisions as documented. LAVTA may reject as nonresponsive any proposal not meeting the requirements of this RFP. An Evaluation Committee shall be comprised of Authority staff and may include outside personnel. The Committee members will evaluate the written proposals using the criteria identified in Section 1.1 above.

Firms submitting a proposal to this RFP may be required to give a demonstration and presentation of their proposal to LAVTA. This presentation may provide an opportunity for the firms to clarify or elaborate on the proposal but will in no way change the original submission.

Engagement staff shall be present at the oral presentation. LAVTA’s request for an oral presentation shall not constitute acceptance of a proposal.

The Authority reserves the right to request additional information to clarify any Proposal.

Upon completion of the review of written submittals and interview, if any, the Authority shall rank each firm in accordance with the criteria above.

After the consultant ranking has been determined, the Authority will open the cost proposal from the top-ranked firm only. LAVTA may accept the Proposal, or negotiate the terms and conditions of the contract with the highest-ranked firm. If negotiations are unsuccessful, the Authority will terminate the negotiations, and may open negotiations with the next highest ranked firm. If negotiations with this firm are also unsuccessful, LAVTA may repeat the negotiations process with the next highest ranked firm, or may, at its sole discretion, reject all remaining proposals.

### **1.3 Award**

The Authority intends to award its total requirements to one proposer. However, if during the evaluation process, the Authority determines that one or more proposers is more qualified in one or more of the specific services desired hereunder, the Authority reserves the right to apportion those requirements among several proposers, as the Authority may deem to be in its best interest.

The Authority reserves the right to accept or reject any or all Proposals received as a result of this solicitation, to negotiate with any qualified firm, to modify or cancel in part or in its entirety the RFP or to request revised Proposals if it is in the best interest of the Authority to do so. The Authority, however, may award a contract without negotiation, so Proposers are encouraged to submit their best offers and proposals.

### **1.4 Notification of Award**

Proposers who submit a proposal in response to this RFP shall be notified by mail regarding LAVTA's intent to award the contract.

**PROPOSAL COVER FORM**  
**for**  
**On-Call Zero Emissions Bus Consulting Services**  
**RFP # 2016-04**

Livermore Amador Valley Transit Authority (LAVTA)  
Livermore, CA

DATE SUBMITTED:

NAME OF INDIVIDUAL SUBMITTING PROPOSAL:

CONTACT PERSON:

NAME UNDER WHICH BUSINESS IS CONDUCTED:

STREET ADDRESS:

MAILING ADDRESS, IF DIFFERENT:

TELEPHONE:

FAX:

BUSINESS LICENSE NUMBER:

CONDITIONS:

1. The undersigned understands that he/she will be bound by the Proposal as expressed by these forms if an award is made by LAVTA. The Contract will be in accordance with this Proposal.
2. The Request for Proposals, Required Forms, and Addenda, if any, are made a part of this Proposal.
3. The undersigned understands that any clarification made to the Proposal Form or any new and different conditions or information submitted in or with the Proposal Form, other than that requested, may render the Proposer unresponsive.

4. The undersigned acknowledges the receipt of the following Addenda:

---

---

---

---

- 5. The undersigned understands that all proposals shall remain in effect for one hundred twenty (120) days from the date of the submittal.
- 6. The undersigned understands that LAVTA reserves the right to reject any or all Proposals or to waive any informality or technicality in any proposal in the interest of LAVTA.
- 7. The undersigned certifies that the Proposal includes all costs for labor, materials, taxes, insurance, overhead, profits, and all other costs necessary to perform the work in accordance with the Contract Documents.
- 8. The undersigned will submit five sets of their proposal package and one electronic copy of the proposal on a CD or USB drive. The five sets of the proposal package and one electronic copy shall be placed in a sealed box (marked "On-Call Zero Emissions Bus Consulting Services Proposal"). The five sets of a proposer's proposal must be submitted as follows as defined in Section I – Instructions to Proposers and Section III – Proposal Content.

The sealed box shall, prior to 2:00 pm Pacific Time on May 5, 2016, be delivered to:  
Beverly Adamo  
Director of Administrative Services  
Livermore Amador Valley Transit Authority  
1362 Rutan Court, Suite 100  
Livermore, CA 94551

- 9. The undersigned is prepared to sign the Sample Agreement without alterations or exceptions or if it is requesting modifications to the Sample Agreement and/or any requirements of this RFP, shall include such requested modifications in its proposal.
- 10. The undersigned confirms the commitment of adequate resources to meet LAVTA's quality and schedule expectations.

SIGNED:

The undersigned certify that we sign this Proposal Form with full and proper authorization to do so.

---

Signature, Printed Name, and Title

---

Signature, Printed Name, and Title

**IF CORPORATION:**

This Corporation is incorporated under the laws of the State of:

---

\*If Contractor is a corporation, two corporate officers must sign on behalf of the corporation as follows: (1) Chairman of the Board, President, or Vice President; and (2) Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Financial Officer. In the alternative, this Contract may be executed by a single officer or a person other than an officer provided that evidence satisfactory to LAVTA is provided, demonstrating that such individual is authorized to bind the corporation (e.g., a copy of a certified resolution from the corporation's board or a copy of the corporation's by laws).

## Price Proposal Form Request for Proposal #2010-16

### CONSULTANT ACTUAL DIRECT HOURLY SALARIES

<b>PROPOSAL PRICING FORM</b>	
<b>Key Staff (Name and/or Title)</b>	<b>Rate per Hour</b>
<b>1.</b>	
<b>2.</b>	
<b>3.</b>	
<b>Other (including proposed subconsultants):</b>	

Note: The Fixed Fee for each Task Order shall be negotiated on an individual basis as set forth in of the Agreement, Section 4, Compensation and Method of Payment.

### CONSULTANT MULTIPLIER AND FEE

The Consultant's Multipliers and Fee shall be as shown below and are in accordance with the requirements of the Agreement, Section 4, Compensation and Method of Payment. The Consultant's maximum fee, as a percentage of fully burdened Direct Labor Cost, allowable by LAVTA shall not exceed 6%.

Payroll Burden \_\_\_\_\_%

Employee Benefits \_\_\_\_\_%

Overhead  
(Home Office) \_\_\_\_\_%

Overhead  
(Dedicated Field Office) \_\_\_\_\_%

SIGNED: The undersigned certify that we sign this Price Proposal Form with full and proper authorization to do so.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature, Printed Name, and Title

\_\_\_\_\_  
Signature, Printed Name, and Title

\*If Contractor is a corporation, two corporate officers must sign on behalf of the corporation as follows: (1) Chairman of the Board, President, or Vice President; and (2) Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Financial Officer. In the alternative, this Contract may be executed by a single officer or a person other than an officer provided that evidence satisfactory to LAVTA is provided, demonstrating that such individual is authorized to bind the corporation (e.g., a copy of a certified resolution from the corporation's board or a copy of the corporation's by laws).

**CERTIFICATION REGARDING WORKER COMPENSATION**

Contract with the LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY, 1362 Rutan Court, Livermore, California 94551, for On-Call Zero Emissions Bus Consulting Services.

RFP # 2010-16

Labor Code Section 3700:

"Every employer, except the State, and all political subdivisions or institutions thereof, shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation by one or more insurers, duly authorized to write compensation insurance in this State.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to employees."

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance. In accordance with the provisions of that code, I will comply with such provisions before commencing the performance of the work of this contract.

Dated: \_\_\_\_\_, 201\_\_  
(Proposer)

By \_\_\_\_\_  
\_\_\_\_\_  
(Official Title)

(SEAL)

(Labor Code Section 1861, provides that the above certificate must be signed and filed by the Proposer with the Authority prior to performing any work under this contract.)



## FAIR EMPLOYMENT PRACTICES CERTIFICATION

In connection with the performance of work under this contract, the Proposer agrees as follows:

1. The Proposer will not willfully discriminate against any employee or applicant for employment because of race, color, religious creed, ancestry, national origin, age, sex, physical disability, mental disabilities, marital status, or medical condition as defined in Government Code §12926. The Proposer will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religious creed, ancestry, national origin, age, sex, physical disability, mental disability, marital status, or medical condition as defined in Government Code §12926. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Proposer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Fair Employment Practices section.
2. The Proposer will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, advising the said labor union or workers' representative of the Proposer's commitments under this section; and the Proposer shall post copies of the notice in conspicuous places available to employees and applicants for employment.
3. The Proposer will permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the Fair Employment Practices Commission, LAVTA, or any other appropriate agency of the State of California designated by LAVTA for the purposes of investigation to ascertain compliance with the Fair Employment Practices section of this contract.
4. A finding of willful violation of the Fair Employment Practices section of this contract or of the Fair Employment Practices Act shall be regarded by LAVTA as a basis for determining the Proposer to be not a "responsible Proposer" as to future contracts for which such Proposer may submit Proposals, for revoking the Proposer's pre-qualification rating, if any, and for refusing to establish, re-establish, or renew a pre-qualification rating for the Proposer.  
  
LAVTA shall deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the Proposer has violated the Fair Employment Practices Act and has issued an order under Government Code §12970 or obtained a court order under Government Code §12973.  
  
Upon receipt of such written notice from the Fair Employment Practices Commission, LAVTA shall notify the Proposer that, unless it demonstrates to the satisfaction of LAVTA within a stated period that the violation has been corrected, the Proposer's pre-qualification rating will be revoked.
5. The Proposer agrees that should LAVTA determine that the Proposer has not complied with the Fair Employment Practices section of this contract then, pursuant to Labor Code Sections 1735 and 1775, the Proposer shall, as a penalty to LAVTA, forfeit, for each calendar day, or portion thereof, for each person who was denied employment as a result of such noncompliance, the penalties provided in the labor code for violation of prevailing wage rates. Such monies may be recovered from the Proposer. LAVTA may deduct any such damages from any monies due the Proposer.
6. Nothing contained in this Fair Employment Practices section shall be construed in any manner of fashion so as to prevent LAVTA from pursuing any other remedies that may be available at law.
7. Prior to award of the contract, the Proposer shall certify to LAVTA that it has or will meet the following standards for affirmative compliance, which shall be evaluated in each case by LAVTA:

a. The Proposer shall provide evidence, as required by LAVTA, that it has notified all supervisors, foremen and other personnel officers, in writing, of the content of the anti-discrimination clause and their responsibilities under it.

b. The Proposer shall provide evidence, as required by LAVTA, that it has notified all sources of employee's referral (including unions, employment agencies, advertisements, Employment Development Department) of the content of the anti-discrimination clause.

c. The Proposer shall file a basic compliance report as required by LAVTA. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also spell out the sources of the work force and who has the responsibility for determining whom to hire or whether or not to hire.

d. Personally, or through its representatives, the Proposer shall, through negotiations with the unions with whom it has agreements, attempt to develop an agreement which will:

(1) Spell out responsibilities for nondiscrimination in hiring, referral, upgrading, and training.

(2) Otherwise implement an affirmative anti-discrimination program in terms of the unions' specific areas of skill and geography to the end that qualified minority workers will be available and given an equal opportunity for employment.

e. The Proposer shall notify LAVTA of opposition to the anti-discrimination clause by individuals, firms, or organizations during the period of its pre-qualification.

8. The Proposer will include the provisions of the foregoing Paragraphs 1 through 7 in every first-tier subcontract so that such provisions will be binding upon each subconsultant.

9. Statements and Payrolls. The Proposer shall maintain its records in conformance with the requirements included in the Information to Proposers and the following Special Conditions:

a. The submission by the Proposer of payrolls or copies thereof, is not required. However, each Proposer and sub-contractor shall preserve their weekly payroll records for a period of three (3) years from the date of completion of this contract.

b. The payroll records shall contain the name, address and social security number of each employee, his/her correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made, and actual wages paid.

c. The Proposer shall make its payroll records available at the project site for inspection by LAVTA and shall permit LAVTA to interview employees during working hours on the job.

The following certification is to be executed by every Proposer and enclosed and forwarded in a sealed envelope containing the Proposal. The person signing the certification shall state his/her address and official capacity.

### Fair Employment Practice Certification

The undersigned, in submitting a Proposal for performing work as specified in the Scope of Work hereby certifies that the Proposer will meet the above standards of affirmative compliance with the Fair Employment Practices Act.

---

PROPOSER

---

SIGNATURE

---

PRINTED NAME OF SIGNER

---

TITLE

---

MAILING ADDRESS

---

CITY	STATE	ZIP CODE
------	-------	----------

---

TELEPHONE NUMBER

---

DATE

**LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY  
A CERTIFICATION CONCERNING CONTROL OF EMPLOYEE  
OF CONTRACTOR**

The contractor, by entering into this Agreement with LAVTA to perform or provide work, services or materials to LAVTA, does hereby certify and assure that in performing the services under this Agreement, the Contractor shall act as an independent contractor and shall have full control of the work and Contractor's employees. Contractor and its employees, under no circumstances whatsoever, shall imply or be considered as an agent(s) or employee(s) of LAVTA. Contractor employees, under no circumstances, shall be entitled to part of any pension plan, insurance, bonus, or any similar benefits which LAVTA provides its own employees.

Any infraction of this Certification shall be cause for termination of this agreement.

Authorized Representative of Proposer

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**LOBBYING CERTIFICATION FOR CONTRACTS GRANTS, LOANS AND COOPERATIVE AGREEMENTS  
(Pursuant to 49 CFR Part 20, Appendix A)**

The undersigned certifies, to the best of his or her knowledge and belief, that:

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 an 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 making lobbying contacts to 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 and as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was 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 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

The Bidder, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Bidder understands and agrees that the provisions of 31 U.S.C. A 3801, et. seq. apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Authorized Official

\_\_\_\_\_ Name and Title of Authorized Official

\_\_\_\_\_ Date



**DISCLOSURE OF LOBBYING ACTIVITIES**  
CONTINUATION SHEET

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

Authorized for Local Reproduction  
Standard Form – LLL-A  
BILLING CODES 3410-01-C; 6450-01-C; 6690-01-C;  
8025-01C; 7510-01-C; 3510-FE-C; 8120-01-C; 4710-24-  
C; 6116-01-C; 6051-01-C; 8230-01-C; 3210-01-C; 4210-  
32-C; 4410-18-C; 4510-23-C; 4810-25-C; 3001-01-C;  
4000-01-C; 3820-01-C; 6560-50-C; 6820-61-C; 4310-RF-  
C; 6718-01-C; 4150-04-C; 7555-01-C; 7537-01-C; 7536-  
01-C; 6050-28-C; 4910-62-C

**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a).  
Enter Last Name, First Name, and Middle Initial(MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.





APPENDIX B

PROPOSED LAVTA AGREEMENT

SAMPLE

THIS AGREEMENT, ("Agreement") made and entered into this \_\_\_ day of \_\_\_, 2016 by and between the **Livermore Amador Valley Transit Authority** (Authority), and \_\_\_\_\_ (Consultant).

**WITNESSETH**

WHEREAS, Authority desires to obtain **On- Call Zero Emissions Bus Consulting Services** (Project) and has issued a Request for Proposals dated \_\_\_\_\_, 2016 (which is attached hereto and incorporated as Attachment 1); and

WHEREAS, Consultant is qualified and willing to provide said On-Call Zero Emissions Bus Consulting Services and has submitted a proposal dated \_\_\_\_\_, 2016 (which is attached hereto and incorporated as Attachment 2).

**NOW, THEREFORE**, Authority and Consultant agree as follows:

**1. RENDITION OF SERVICES**

The Consultant agrees to perform services to Authority in accordance with the terms and conditions of this Agreement. The Consultant agrees to provide these services to the Authority in accordance with the terms and conditions of this Agreement. In the performance of its work, the Consultant represents that it (1) has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants that provide similar multi-discipline support services as further described in the solicitation documents; (2) carries all applicable licenses, certificates, and registrations in current and good standing that may be required to perform the work; and (3) will retain all such licenses, certificates, and registrations in active status throughout the duration of this engagement.

**2. SCOPE OF SERVICES**

Subject to the terms and conditions set forth in this Agreement, Consultant shall provide the services described in Attachment 1, as supplemented by Attachment 2, except when inconsistent with Attachment 1.

**3. SCHEDULE AND TIME OF COMPLETION**

A. Task Order Performance Period

The Consultant's performance of services for each Task Order shall commence upon receipt of written authority to proceed from LAVTA's Planning Director for the respective Task Order and the Consultant shall complete the services within the time frame specified in the Task Order.

B. Agreement Performance Period

Task Orders may be issued against this Agreement any during the three-year

base term, from the effective date of this Agreement, with LAVTA's unilateral option to extend this period for up to two additional one-year terms. Terms of individual Task Orders may exceed the Agreement term. Task Orders will be issued on either a Firm-Fixed-Price (FFP) or Cost-Plus-Fixed-Fee (CPFF) with ceiling compensation basis. This Agreement will remain in full force and effect until all outstanding services under the Task Orders are completed or terminated.

It is further understood that the base term of the Agreement or any option term(s) granted thereto are subject to the LAVTA's right to terminate the Agreement in accordance with Section 12 of this Agreement.

**4. COMPENSATION AND METHOD OF PAYMENT**

Consultant agrees to perform the services to be specified in each Task Order in accordance with the terms and conditions of this Agreement. At the discretion of LAVTA, compensation for each Task Order performed under this Agreement will be either firm-fixed-price (FFP) or Cost-Plus-Fixed-Fee (CPFF) with ceiling. Each Task Order shall follow the process set forth in Attachment 1.

It is expressly understood and agreed that in no event shall Consultant commence work without a mutually agreed upon Task Order. Further, it is expressly understood and agreed that in no event shall Consultant be compensated in an amount greater than the amount specified in any individual Task Order for the services performed under such Task Order without issuance of a written Amendment to such Task Order by LAVTA's authorized representative.

If at any time, Consultant has reason to believe that the total compensation payable for the performance of services under this Agreement will exceed the maximum not-to-exceed amount as set for in the Task Order, Consultant shall notify LAVTA immediately in writing to that effect, indicating the estimated additional amount necessary to complete the services in the Task Order. Any cost incurred by Consultant in excess of the not-to-exceed amount as set forth in the Task Order shall be at Consultant's own risk.

Further, it is understood that execution of this Agreement does not guarantee any amount of services and/or dollar expenditure to be provided under the Agreement to Consultant.

**A. Firm-Fixed-Price Compensation Basis**

The firm fixed price for each Task Order shall include all labor, materials, taxes, profit, overhead, insurance, subcontractor/subconsultant costs and all other costs and expenses incurred by the Consultant. Compensation for Firm-Fixed-Price Task Orders is negotiable.

**B. Cost-Plus-Fixed-Fee with Ceiling Compensation Basis**

Compensation will be allowable only to the extent that estimated costs and costs incurred are compliant with Federal cost principals contained in Title 48, Code of

Federal Regulations, Part 31. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under these Federal cost principals are subject to repayment by Consultant to LAVTA.

On an annual basis, 60 days before the start of the succeeding contract/Agreement year, Consultant shall submit proposed multipliers (as defined below) for Payroll Burden, Employee Benefits, Home Office, and Dedicated Field Office, to the Contract Officer for approval by LAVTA. Upon approval by LAVTA, the multipliers shall remain in effect for the contract/Agreement year.

Initial proposed rates shall be negotiated and shall be firm for the first year of the Agreement. LAVTA intends to negotiate direct and indirect (overhead) cost rates based on the agreed-upon previous-year contract rates, audited rate history and the maximum profit/fees as set forth below (Maximum Fees for Cost Plus Fixed-Fee (CPFF) with Ceiling Type Task Orders).

Negotiated hourly rates shall be fixed and used as the billing rate for the first year of the agreement. For the second or subsequent years of the Agreement term, increases in future negotiated Direct Labor Rates shall be limited to the equivalent of the Consumer Price Index (CPI) for the applicable year based on the percentage change as evidenced by the most recent Consumer Price Index (CPI) for LAVTA's geographic area available to LAVTA up to a maximum of 3.5 percent escalation, unless otherwise mutually agreed. The effective date of the CPI adjustment, if any, will commence on either (1) the first day of the second and/or subsequent year(s) of the contract, or (2) the date of the Consultant's request, whichever event is later.

#### Costs of Work and Fixed Fees

The cost of work shall be calculated as the sum of the direct labor times a multiplier for payroll burden, employee benefits, and overhead costs, plus other direct costs as set forth in this Section.

#### Direct Labor Cost

The individual direct labor costs are subject to salary administration as set forth in Title 48 Code of Federal Regulations Part 31.205-6.

#### Straight Time

Straight time payroll is to be the equivalent annual salary/wage divided by 2080 hours per annum for the employees whose names appear in an approved personnel list and who are directly assigned to and performing the services under this Agreement. Consultant shall be compensated through an agreed upon multiplier for overhead including all administrative, clerical, word processing, accounting and all other support staff utilized in performing services under this Agreement, which are not explicitly included on the approved personnel list. Charges by Consultant for an employee's straight time shall in no instance exceed the actual

amount paid to such employee for time directly spent on services performed under this Agreement by such employee.

Ranges of Rates – Consultant shall provide ranges of current actual hourly rates by job titles/classifications. These ranges may be adjusted each contract year to reflect agreed-upon increases, as defined above.

Rates at Time of Award – At contract award, hourly rates, including administrative/clerical rates, shall be proposed for individuals who are expected to be assigned to the Agreement. These proposed hourly rates shall be supported by current actual rates.

New Personnel after Award – For approved new personnel to be added after contract award, Consultant shall propose rates within the approved Ranges of Rates as indicated above. Hourly rates shall be supported by current actual rates.

#### Overtime

LAVTA will reimburse Consultant the straight time portion and premium time portion (if payable to the employee in accordance with the Consultant's employment policies) of its employee's actual overtime pay during performance of services under this Agreement, provided that the LAVTA has approved the overtime, in writing, prior to Consultant incurring said overtime.

Charges by Consultant for an employee's overtime shall in no instance exceed the actual amount paid to such employee for time directly spent on services performed under this Agreement by such employee.

#### Consultant Multipliers (Payroll Burden, Employee Benefits, and Overhead)

Consultant multipliers may be inclusive of the markups for payroll burden, employee benefits and office overhead for each office location as defined below. The multiplier is fixed and can be subject to change as indicated above.

LAVTA agreed-upon multipliers shall be used for Consultant's home office (main office) and dedicated field office, as appropriate to the assigned location of individuals working on the project. The multipliers shall be applied to direct labor costs only as defined above. LAVTA approved Consultant multipliers are included in Consultant's Cost Proposal.

#### Payroll Burden

Consultant and LAVTA agree that the following will be considered as Payroll Burdens and as such shall be paid to Consultant as compensation for said costs, as set forth below.

“Payroll Burden” for Consultant’s employees is defined as: The cost of all employment taxes, Consultant’s portion of social and retirement charges and contributions imposed by law, or labor contract contributions (if applicable), or regulations, with respect to or measured by Consultant’s payroll, including but not limited to, the Consultant’s cost of owner-required insurance.

Employee Benefits

“Employee Benefits” for Consultant’s employees defined as: The cost of all Consultant’s contractual and voluntary employee benefits, including but not limited to, holidays, vacations, sick leave, jury duty leave, group medical, life insurance, salary continuance insurance, bonus schemes (including Directors drawings of dividends), employee stock ownership plan, savings plan, retirement plan, relocation benefits and all other employee benefit plans.

Office Overhead (Indirect Costs)

LAVTA and Consultant agree that the following will be considered as office overhead categories and as such shall be paid to Consultant as compensation for said costs including all administrative, clerical, word processing, accounting and all other support staff utilized in the performance of services under this Agreement, which are not explicitly included on the approved personnel list.

Consultant’s Home Office Overhead shall apply to personnel assigned in Consultant’s Home Office in support of the performance of services under this Agreement

Allowable Other Direct Costs (ODCs)

Other Direct Costs shall be proposed at cost without markup. Examples of Other Direct Costs include, but are not limited to: travel expenses, parking, tolls, mail costs, film, photo developing, facsimiles, printing/copying, plan reproduction, blue print services and subconsultants directly associated with the project. Expenditures for allowable other direct costs in excess of \$500.00 and not included in the aforementioned list shall require advance approval by LAVTA. Supporting documentation is required for reimbursement of all other direct costs.

Limitations on Direct Costs

The following are limitations:

Travel Expenses - All travel and relocation related plans must be approved in writing by LAVTA prior to the commencement of the travel. If written approval is received for relocations, travel, temporary accommodations and or assistance, FAR 31.205-46(a) Sections 1 and 2 and Federal Travel Regulation (41 CFR 301-304) will apply. Lodging

and per diem rates shall not exceed the U.S. General Services Administration (GSA) rate at the time of travel for the specific area. Costs incurred for travel, subsistence, and relocation of personnel engaged in the performance of services under this Agreement, if approved in advance by LAVTA will include the following:

- Relocation expenses, travel, temporary accommodations, and/or subsistence related to mobilization travel to the Consultant's dedicated project office for Consultant and Subconsultant personnel permanently assigned to the project. Such expenses shall be reduced by any amount received from others by Consultant or Subconsultant for demobilization from the prior project assignment.

- Relocation expenses, travel, temporary accommodations, and/or subsistence related to demobilization travel from the Consultant's dedicated project office for Consultant and Subconsultant personnel who have been permanently assigned to the project. Individuals assigned from domestic locations shall be eligible for up to the cost of returning to the original domestic location. Individuals assigned from international locations shall be eligible for the cost of relocating to the Consultant's or Subconsultant's domestic home office or to another domestic location, whichever is less.

- Travel, accommodations and subsistence (directly related to the Scope of Services) for business trips to and from the Project Site, to and from LAVTA's contractors and suppliers, or to and from other locations approved by the LAVTA. Such travel may originate at Consultant's or Subconsultant's home or branch office, or at the Consultant's dedicated field office, or at LAVTA's central or field offices.

#### Unallowable Other Direct Costs (ODCs)

The following ODCs are not allowable unless they are authorized by prior written approval of LAVTA's representative:

- Costs associated with registration for training, seminars, and technical association meetings.
- Costs associated with employee incentive compensation including cash bonuses, suggestion awards, safety awards and other forms of incentive compensation.
- Costs associated with leasing, maintaining, insuring and operating dedicated project vehicles at the dedicated office.
- Computer hardware and software support, software licenses, or cellular phone usage.
- Safety equipment such as steel toed boots, safety vests, and hard hats.
- Insurance
- Cost of any normal equipment, tools, or vehicles (unless approved) hired, leased or purchased for the performance of services, provided that the depreciated value of such items purchased by Consultant shall be credited to LAVTA at the completion of the work performed under this



- Agreement.
- Shipping
  - Drafting supplies
  - Surveying supplies
  - Models and renderings
  - Other expressly agreed ODC's.

Subcontracts (Subconsultants)

For costs for individual consultants, subconsultants and other outside services which are not directly contracted for by the Consultant, but where the Consultant is acting as LAVTA's agent for management of the work, there will be no added subconsultant mark-up.

The Subconsultant Fixed Fee for each Task Order shall be negotiated on an individual basis, plus a separately stated Subconsultant's fee based on an agreed-upon percentage of the agreed-upon fully burdened labor costs as defined above. The Consultant's mark-up shall be derived from a two (2) percent subconsultant fixed fee applied to agreed-upon subcontract costs.

The agreed upon subconsultant mark-up for "Subcontract Costs" shall apply throughout the entire term of the Agreement and shall not be subject to increase.

Maximum Fees for Cost-Plus-Fixed-Fee (CPFF) with Ceiling Task Orders

The Consultant fixed fee for each Task Order shall be negotiated on an individual basis. The agreed upon Consultant's fee shall apply throughout the entire term of the task orders.

The Consultant's maximum fee, as a percentage of fully burdened Direct Labor Cost, allowable by LAVTA shall not exceed 6%.

C. Manner of Payment

The Consultant shall submit separate invoices/billing statements on or as soon as practical after the first day of each calendar month. Consultant shall submit monthly invoices, detailing the services performed and allowable reimbursable expenses incurred during the previous calendar month for Services to be performed at LAVTA's request.

Each invoice must be segregated, computed and documented as follows

1. Firm-Fixed-Price Task Orders (FFP)

For Fixed Price Task Orders, Consultant shall reach agreement with LAVTA's Project Manager on the current percentage complete of the Task Order prior to

submittal of invoice. Consultant shall provide a basis for percentage complete using a percent complete breakdown by Task Order task.

2. Cost-Plus-Fixed-Fee (CPFF) with Ceiling Task Orders

By Task

1. Direct Labor Costs
2. Payroll Burden, Employee Benefits and Office Overhead (Multipliers)
3. Other Direct Costs (used exclusively for a specific task)

Overall Project

4. Other Direct Costs (used in support of multiple tasks)
5. Fixed Fee Allocation (allocated to each payment cycle based on the portion of the current billing period cost of work to the total agreed upon not-to-exceed amount of the current Task Order)

Consultant shall provide supporting documentation for its invoices as required by LAVTA. LAVTA will endeavor to pay approved invoices/billing statements within 30 calendar days of their receipt. LAVTA reserves the right to withhold payment to the Consultant if LAVTA determines that the quantity or quality of the work performed is unacceptable. LAVTA shall provide written notice to the Consultant within 10 business days of LAVTA's decision not to pay and the reasons for non-payment.

Invoices shall be made in writing and delivered or mailed to LAVTA as follows:

Accounts Payable  
Livermore/Amador Valley Transit Authority  
1362 Rutan Court  
Suite 100  
Livermore, CA 94551

Consultant represents that Consultant's taxpayer identification number (TIN) is as evidenced by a completed Federal Form W-9.

5. **CONSULTANT'S KEY PERSONNEL**

It is understood and agreed by the parties that at all times during the term of this Agreement that \_\_\_\_\_ shall serve as the primary staff person of Consultant to undertake, render, and oversee all of the services under this Agreement. Upon written notice by the Consultant and approval by the Authority, which will not be unreasonably withheld, the Consultant may substitute this person with another person, who may possess similar qualifications and experience for this position.

6. **CHANGES**

Authority may, at any time, by written order, make changes within the Scope of Work and services described in this Agreement. If such changes cause an increase in the budgeted cost of or the time required for performance of the

agreed upon work, an equitable adjustment as mutually agreed shall be made in the limit on compensation as set forth in Section 4. In the event that the Consultant encounters any unanticipated conditions or contingencies that may affect the scope of work or services, schedule or the amount of compensation specified herein, Consultant shall so advise Authority immediately upon notice of such condition or contingency. The written notice shall explain the circumstances giving rise to the unforeseen condition or contingency and shall set forth the proposed adjustment in schedule or compensation. This notice shall be given to the Authority prior to the time that Consultant performs work or services related to any proposed adjustment. The pertinent changes shall be expressed in a written supplement to this Agreement prior to implementation of such changes.

**7. CONSULTANT'S STATUS**

Consultant is an independent consultant and not an employee or agent of Authority and has no Authority to contract or enter into any other agreement in the name of Authority. Consultant has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by Consultant who are assisting in the performance of services under this Agreement. Consultant shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. Consultant shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

**8. INDEMNIFICATION**

To the maximum extent permitted by law, Consultant shall defend, indemnify and hold harmless Authority, its directors, officers, agents and employees from all claims, demands, suits, loss, damages, injury and liability, direct or indirect (including any and all costs and expenses in connection therewith) (collectively "Liability"), that arise out of, pertain to, or relate to the negligence, recklessness, or intentional misconduct of Consultant, its officers, agents, employees and subcontractors/subconsultants or any of them. This obligation shall not apply to Liability that arising from the sole negligence or willful misconduct of Authority. Except as provided above, Consultant will indemnify and defend Authority notwithstanding any alleged or actual passive negligence of Authority which may have contributed to the Liability. In the event any aspect of the foregoing provision is found to be void or unenforceable, a court shall interpret this provision to give the maximum protection available to the Authority under applicable law. This provision will survive termination or expiration of the Agreement.

**9. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS**

All Consultant and subcontractors/subconsultants costs incurred in the performance of this Contract will be subject to audit. Consultant and its subcontractors/subconsultants shall permit LAVTA, or its authorized representatives to inspect, examine, make excerpts from, transcribe, and copy Consultant's books, work, documents, papers, materials, payrolls records, accounts, and any and all data relevant to the Agreement at any reasonable time, and to audit and verify

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

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

**10. DATA TO BE FURNISHED BY AUTHORITY--CONFIDENTIALITY**

All data, reports, surveys, studies, drawings and any other documents and materials made available to Consultant by Authority for use by Consultant in the performance of its services under this Agreement shall be made available for information only and shall be returned to Authority at the completion or termination of this Agreement.

Any LAVTA materials to which the Consultant has access or materials prepared by the Consultant during the course of this Agreement ("confidential information") shall be held in confidence by the Consultant, who shall exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of the Consultant as necessary to accomplish the rendition of services required by this Agreement.

Consultant shall not release any reports, information or promotional materials prepared in connection with this Agreement, whether deemed confidential or not, to any third party without the approval of the LAVTA.

**11. OWNERSHIP OF WORK**

- A. All communications and records originated, prepared, and in the process of being prepared, for the services to be performed by Consultant under this Agreement, including, but not limited to, findings, analyses, submittals, conclusions, opinions, engineering drawings, specifications, standards, process sheets, photographs, videos, manuals, technical reports and recommendations with respect to the subject matter of this Agreement and raw and underlying data of such materials, regardless of format or media, including software, reports and other documentation (all of the foregoing, collectively, the "Work Product"), shall be delivered to and become the property of LAVTA. LAVTA shall be entitled to access and to copy the Work Product during the progress of the Work. Any Work Product remaining in the hands of Consultant or in the hands of any subcontractor/subconsultant upon completion or termination of the work shall be immediately delivered to LAVTA and not later than within two (2) weeks of completion or termination of the Work. If any materials are lost, damaged or destroyed before final delivery to LAVTA, Consultant shall

replace them at its own expense, and Consultant assumes all risk of loss, damage or destruction of or to such materials.

- B. Any specific knowledge of LAVTA proprietary information gained as a result of this Agreement shall be used exclusively to accomplish the Scope of Work outlined above and for no other purpose.
- C. Any and all rights of copyright to Work Product prepared under this Agreement are hereby assigned to LAVTA. Consultant agrees to execute any additional documents that may be necessary to evidence such assignment. Consultant agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in such Work Product. Except for its own internal use, Consultant shall not publish or reproduce such Work Product in whole or in part, or in any manner or form, nor authorize others to do so, without the written consent of LAVTA
- D. Notwithstanding anything herein to the contrary, LAVTA acknowledges that as part of Consultant's provision of work hereunder, Consultant may utilize proprietary works of authorship including, without limitation, software, methodologies, tools, specifications, drawings, sketches, models, samples, records and documentation, as well as copyrights, trademarks, service marks, ideas, concepts, know-how, techniques, knowledge or data, that have been originated or developed by Consultant or by third parties under Agreement to, or which have been purchased by, Consultant (all of the foregoing, collectively, "Consultant's Information"). LAVTA agrees that Consultant's Information is and shall remain the sole property of Consultant or such third party. Consultant agrees that LAVTA shall be entitled to use Consultant's Information in connection with this Agreement, and shall grant to LAVTA a perpetual, royalty-free, irrevocable, worldwide, non-exclusive license to use all Consultant's Information and to create and use derivative works of Consultant's Information in connection with this Agreement.
- E. Consultant represents and warrants that it has or will have all appropriate licenses, agreements and/or ownership pertaining to all intellectual property, including but not limited to patents and copyrights, used in connection with the performance of its obligations under this Agreement. Consultant further represents and warrants that it will have all necessary rights to patentable and copyrightable materials, equipment, devices or processes not furnished by LAVTA used on or incorporated in the work and assumes all risks arising from the use of such patentable and copyrightable materials, equipment, devices, or processes.
- F. Consultant shall indemnify, defend and hold harmless LAVTA, its directors, officers, agents and employees to the maximum extent permitted by law from and against any and all claims, liabilities, losses, damages or expenses (including attorneys' fees and related costs, whether or not litigation has commenced), whether direct or indirect, arising out of, relating to, or in connection with the ownership, possession or use of any materials, equipment, devices, or processes that are protected by intellectual property rights, including patent, copyright and trade secret. In case such materials, equipment, devices or processes are held to constitute an infringement and their use enjoined, Consultant, at

Consultant's sole cost and expense, shall: (a) secure for LAVTA the right to continue using the materials, equipment, devices or processes by suspension of the injunction or by procuring a royalty-free license or licenses, or (b) replace such materials, equipment, devices, or processes with non-infringing materials, equipment, devices or processes that perform the same functions as the infringing item, or (c) modify them so that they become non-infringing or remove the enjoined materials, equipment, devices or processes and refund the sums paid therefore, without prejudice to any other rights of LAVTA. If the amount of time necessary to proceed with one of these options is deemed excessive by LAVTA, LAVTA may direct Consultant to select another option or risk default.

## **12. TERMINATION**

LAVTA shall have the right to suspend or terminate this Agreement at any time by giving written notice to the Consultant. Upon receipt of such notice, the Consultant shall not commit itself to any further expenditure of time or resources.

If the Agreement is suspended or terminated for any reason other than a default by Consultant, LAVTA shall pay to Consultant all sums actually due and owing from LAVTA for all services performed and all expenses incurred up to the day written notice of effective date of suspension or termination is given, plus any costs LAVTA determines are reasonably and necessarily incurred by Consultant to effect such suspension or termination. If the Agreement is terminated for default, LAVTA shall remit final payment to Consultant in an amount to cover only those services performed and expenses incurred in full accordance with the terms and conditions of this Agreement up to the effective date of termination.

## **13. CLAIMS OR DISPUTES**

The Consultant shall be solely responsible for providing timely written notice to LAVTA of any claims for additional compensation and/or time in accordance with the provisions of this Agreement. It is the LAVTA's intent to investigate and attempt to resolve any Consultant claims before the Consultant has performed any disputed work. Therefore, Consultant's failure to provide timely notice shall constitute a waiver of Consultant's claims for additional compensation and/or time.

The Consultant shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the LAVTA, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given the LAVTA due written notice of a potential claim. The notice of a potential claim shall set forth the reasons for which the Consultant believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

If based on an act or failure to act by the LAVTA, such notice shall be given to the LAVTA prior to the time that the Consultant has started performance of the work giving rise to the potential claim for additional compensation. In all other

cases, notice shall be given within 10 days after the happening of the event or occurrence giving rise to the potential claim.

If there is a dispute over any claim, the Consultant shall continue to work during the dispute resolution process in a diligent and timely manner as directed by the LAVTA, and shall be governed by all applicable provisions of this Agreement. The Consultant shall maintain cost records of all work which is the basis of any dispute.

If an agreement can be reached which resolves the Consultant's claim, the parties will execute a contract change to document the resolution of the claim. If the parties cannot reach an agreement with respect to the Consultant's claim, they may choose to pursue a dispute resolution process.

**14. CONFLICT OF INTEREST**

A. General

Depending on the nature of the work performed, a Consultant of LAVTA may be subject to the same conflict of interest prohibitions established by the Federal Transit Administration (FTA) and California law that govern LAVTA's employees and officials (Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section 87100 et seq.). During the proposal process or the term of the Agreement, Consultant and its employees may be required to disclose financial interests.

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

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

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

No officer or employee of LAVTA during his or her tenure or for one year after that tenure shall have any interest, direct or indirect, in this Agreement or the proceeds under this Agreement.

B. Organizational Conflicts of Interest

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

Consultant shall not engage the services of any Subconsultant or independent consultant on any work related to this Agreement if the Subconsultant or independent consultant, or any employee of the Subconsultant or independent consultant, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement Consultant becomes aware of an organizational conflict of interest in connection with the work performed hereunder, Consultant immediately shall provide LAVTA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. Consultant's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest.

If at any time during the term of this Agreement, LAVTA becomes aware of an organizational conflict of interest in connection with Consultant's performance of the work hereunder, LAVTA shall similarly notify Consultant.

In the event a conflict is presented, whether disclosed by Consultant or discovered by LAVTA, LAVTA will consider the conflict presented and any alternatives proposed and meet with the Consultant to determine an appropriate course of action. LAVTA's determination as to the manner in which to address the conflict shall be final.

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

Consultant shall maintain written policies prohibiting organizational conflicts of interest and shall ensure that its employees are fully familiar with these policies. Consultant shall monitor and enforce these policies and shall require any



subconsultants and affiliates to maintain, monitor and enforce policies prohibiting organizational conflicts of interest.

Failure to comply with this section may subject the Consultant to damages incurred by LAVTA in addressing organizational conflicts that arise out of work performed by Consultant, or to termination of this Agreement for breach

**15. PREVAILING WAGE**

This Agreement may involve the provision of inspection and/or surveying work that may be subject to the California Labor Code. The Consultant shall comply with the following requirements of the California Labor Code to the extent applicable.

Consultant shall comply with California Labor Code Sections 1770 to 1780, inclusive. In accordance with said Section 1775, Consultant shall forfeit as a penalty to the Authority, an amount determined by the Labor Commissioner not to exceed Fifty Dollars (\$50.00), for each calendar day or portion thereof for each worker paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the Agreement by it or by any subconsultant under it in violation of the provisions of the Labor Code and, in particular, Labor Code Sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Consultant.

Pursuant to the provisions of Section 1773 of the Labor Code, Consultant shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work applicable to the work to be done from the Director of the Department of Industrial Relations. Copies of the prevailing rates will be on file at Consultant's Administrative Office and will be available to any interested party on request. To the extent possible, such wage rates will be prominently posted.

Pursuant to Labor Code 1810, eight hours labor constitutes a legal day's work. Consultant shall comply with the California Labor Code Sections 1810 to 1815, inclusive.

LAVTA's to whom this Agreement is awarded shall sign and file with the Consultant's Contract Officer the following certification prior to performing the work of the contract:

"I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance."

**16. WARRANTY OF SERVICES**

- A. Consultant warrants that its professional services will be performed in accordance with the professional standards of practices of comparable Engineering Design firms at the time the services are rendered. In addition, Consultant shall provide such specific warranties as may be set forth in the individual Task Orders as agreed upon by the parties.
- B. In the event that any services provided by the Consultant hereunder are deficient because of Consultant's or subconsultants failure to perform said services in accordance with the warranty standards set forth above, LAVTA shall report such deficiencies in writing to the Consultant within a reasonable time. LAVTA thereafter shall have:
1. The right to have the Consultant re-perform such services at the Consultant's expense; or
  2. The right to have such services done by others and the costs thereof charged to and collected from the Consultant if within thirty days after written notice to the Consultant requiring such re-performance, Consultant fails to give satisfactory evidence to LAVTA that it has undertaken said re-performance.
  3. The right to terminate the Agreement for default.
- Consultant shall be responsible for all errors and omissions and is expected to pay for all redesign and re-construction work as a result of errors and omissions.

**17. SUBCONTRACTS**

Consultant shall not subcontract all or any portion of its services under this Agreement without the prior written approval of the Authority, and any attempt thereat shall be void and unenforceable. In the event that Consultant enters into one or more subcontracts pursuant to this article, it is understood and agreed that the participating subcontractors shall be solely and directly responsible to Consultant, and Authority shall have no obligation to them.

**18. ASSIGNMENT OF AGREEMENT**

Consultant shall not assign this Agreement or any part thereof without prior express written consent of Authority, and any attempt thereat shall be void and unenforceable.

**19. FEDERAL CONTRACT PROVISIONS**

This Contract may be subject to financial assistance from the U.S. Department of Transportation, Federal Transit Administration (FTA). The following provisions therefore apply.

A. Fly America Requirements

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

B. Energy Conservation

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Federal Energy Policy and Conservation Act, 49 U.S.C. §§ 6321 et seq.

C. Clean Water and Air Requirements

The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq., and the Clear Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Consultant agrees to report each violation to the LAVTA and understands and agrees that LAVTA will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office.

The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in part or in whole with federal assistance provided by the FTA.

D. Lobbying

Consultant shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Consultant shall certify that it will not and has not used Federally 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. Consultant shall also disclose the name of

any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures shall be forwarded to LAVTA. Consultant shall ensure that all of its subconsultants under this Agreement shall certify the same. Prior to execution of this Agreement, Consultant shall submit the "Certification for Federal Aid Contracts," included in the Contract Documents. LAVTA is responsible for keeping the certification of the Consultant who is, in turn, responsible for keeping the certification forms of subconsultants.

E. Certification Regarding Debarment and Suspension.

The Consultant shall submit, prior to execution of this Agreement, documentation showing that neither the Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. For this purpose, the Consultant must complete and execute the form entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion," which is included in the Proposal Documents. Consultant also agrees to include this provision in any subcontract exceeding \$25,000 and to obtain a similar certification from any subconsultant seeking a subcontract exceeding \$25,000 and forward the certification to LAVTA.

F. Access to Records and Reports

Consultant shall provide all authorized representatives of LAVTA, the FTA, and the Comptroller General of the United States access to any books, documents, papers and records of the Consultant which are directly pertinent to this Agreement for the purposes of making audits, copies, examinations, excerpts and transcriptions. Consultant also agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Consultant agrees to maintain the same until LAVTA, the FTA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

G. Federal Changes

Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (15) dated October, 2008) between LAVTA and the FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Consultant's failure to so comply shall constitute a material breach of this Agreement.

H. No Government Obligation to Third Parties

LAVTA and Consultant 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 Agreement and shall not be subject to any obligations or liabilities to LAVTA, Consultant, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

The Consultant 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 subconsultant who will be subject to its provisions.

I. Program Fraud and False or Fraudulent Statements and Related Acts

The Consultant 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 Consultant 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 Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Consultant 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 Consultant to the extent the Federal Government deems appropriate.

The Consultant 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 LAVTA 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 Consultant, to the extent the Federal Government deems appropriate.

The Consultant 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 subconsultant who will be subject to the provisions.

J. Disadvantaged Business Enterprises (DBE)

LAVTA, recipient of federal financial assistance from the Federal Transit Administration (FTA) is committed to and has adopted a Disadvantaged Business Enterprise Program for contracts in accordance with federal regulations 49 CFR Part 26, issued by the U. S. Department of Transportation (U.S. DOT).

It is the policy of LAVTA to ensure nondiscrimination in the award and administration of all contracts and to create a level playing field on which Disadvantaged Business Enterprises (DBEs) can compete fairly for contracts and

subcontracts relating to LAVTA's construction, procurement and professional services activities. To this end, LAVTA has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside of the DBE Program. In connection with the performance of this contract, the Consultant will cooperate with LAVTA in meeting these commitments and objectives.

Pursuant to 49 CFR §26.13, and as a material term of any agreement with LAVTA, the Consultant hereby makes the following assurance and agrees to include this assurance in any agreements it makes with Subcontractors in the performance of this contract:

"The Consultant or Subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the Consultant or Subconsultant 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 LAVTA deems appropriate."

K. Civil Rights Requirements

Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Equal Employment Opportunity

The following equal employment opportunity requirements apply:

Race, Color, Creed, National Origin, Sex

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the CONSULTANT agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take

affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

#### Age

In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

#### Disabilities

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

The Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

#### L. Davis-Bacon and Copeland Anti-Kickback Acts

This Agreement may involve the provision of inspection and/or surveying work that may be subject to Davis-Bacon Act requirements as follows:

##### (1) Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Consultant and its subconsultants at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the Consultant and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification



action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

(v) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Consultant under this contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Consultant, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Consultant or any subconsultant the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Authority may, after written notice to the, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and Basic Records

(i) Payrolls and basic records relating thereto shall be maintained by the Consultant during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site

of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Consultant shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Consultants employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Consultant shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Consultant is responsible for the submission of copies of payrolls by all subconsultants.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Consultant or subconsultant or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for

the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Consultant or subconsultant to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Consultant or subconsultant shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Consultant or subconsultant fails to submit the required records or to make them available, the Federal agency may, after written notice to the Consultant, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and Trainees

(i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Consultant as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Consultant is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Consultant's or subconsultant's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered

program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Consultant will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Consultant will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act Requirements

The Consultant shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts

The Consultant or subconsultant shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for the compliance by any subconsultant or lower tier subconsultant with all the contract clauses in 29 CFR 5.5.

(7) Contract Termination: Debarment

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Consultant and a subconsultant as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Consultant (or any of its subconsultants) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of Eligibility

(i) By entering into this contract, the Consultant certifies that neither it (nor he or she) nor any person or firm who has an interest in the Consultant's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

M. 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 contractual provisions required by DOT, as set forth in FTA Circular 4220.1F 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 Consultant shall not perform any act, fail to perform any act, or refuse to comply with any LAVTA requests which would cause LAVTA to be in violation of the FTA terms and conditions.

**20. NOTICES**

Except for invoices submitted by Consultant pursuant to Article 4, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered or mailed to such party at their respective addresses as follows:

To Authority:

Executive Director  
Livermore/Amador Valley Transit Authority  
1362 Rutan Court  
Suite 100  
Livermore, CA 94551

To Consultant :

**21. LAWS AND REGULATIONS**

Consultant shall comply with its standard of care with regard to any and all laws, statutes, ordinances, rules, regulations and procedural requirements of any national, state or local government and of any agency of such government, including Authority, which relate to or in any manner affect the performance of this Agreement. This Agreement and any related documents supplied hereunder are subject to the California Public Records Act.

**22. CHOICE OF LAW**

All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of California applicable to agreements made and to be performed within the state.

**23. FORCE MAJEURE**

It is expressly agreed that if the Consultant shall be delayed or interrupted in the performance or completion of its work hereunder by any act, neglect or default of the Authority, or of any employee of the owner, or of any other consultant employed by the Authority, or by an embargo, war, fire, flood, earthquake, epidemic or other calamity, act of God or of the public enemy, governmental act (including, but not restricted to, any government priority, preference, requisition, allocation, interference, restraint or seizure, or the necessity of complying with any governmental order, directive, ruling or request) or by any strike or labor dispute involving the Authority, or any manufacturer, supplier or carrier of the machinery, materials or supplies required hereunder, then the time of completion specified herein shall be extended for a period equivalent to the time lost as a result thereof.

**24. ENTIRE AGREEMENT**

This Agreement is the entire agreement of the parties. Consultant represents that in entering into this Agreement, it has not relied on any previous representations, inducements or understandings of any kind or nature.

**25. SEVERABILITY**

If any provision, or any portion of any provision, of any contract resulting from this proposal shall be held invalid, illegal or unenforceable, the remaining provisions or portions of any provisions shall be valid and enforceable to the extent possible.

**26. BENEFIT OF AGREEMENT**

This Agreement shall bind and benefit the parties hereto and their heirs, successors and permitted assigns.

**27. ATTORNEY'S FEES AND OTHER FEES**

Should either party institute any action to enforce this Agreement, or any provision hereof, the prevailing party in any such action or proceeding shall be entitled to receive from the other party all costs and expenses, including reasonable attorney's fees.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.



**THE LIVERMORE AMADOR VALLEY  
TRANSIT AUTHORITY**

\_\_\_\_\_  
Executive Director

Date: \_\_\_\_\_

\_\_\_\_\_  
By\*

\_\_\_\_\_  
Title

\_\_\_\_\_  
By\*

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Attorney for the Authority

\*If Consultant is a corporation, two corporate officers must sign on behalf of the corporation as follows: (1) Chairman of the Board, President, or Vice President; and (2) Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Financial Officer. In the alternative, this Contract may be executed by a single officer or a person other than an officer provided that evidence satisfactory to LAVTA is provided, demonstrating that such individual is authorized to bind the corporation (e.g., a copy of a certified resolution from the corporation's board or a copy of the corporation's by laws).