

LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY
(LAVTA)

REQUEST FOR PROPOSALS

FOR

FINANCIAL AUDITING SERVICES

#2017-01

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

December 9, 2016

Key RFP Dates

Date of Issuance:	December 9, 2016
Pre-Proposal Conference (Optional):	December 15, 2016 at 10:00 a.m.
Written Questions/Request Due:	December 19, 2016 at 4:00 p.m.
Responses to Questions/Requests Due:	December 21, 2016
Proposals Due:	January 9, 2017 at 2:00 p.m.
Demonstrations and Presentations (estimated):	January 16 – 17, 2017
Contract Award (estimated):	February 6, 2017
Contract Execution (estimated):	February 7, 2017

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

December 9, 2016

**SUBJECT: NOTICE OF REQUEST FOR PROPOSALS
FINANCIAL AUDITING SERVICES #2017-01**

The Livermore Amador Valley Transit Authority (LAVTA), operator of the Wheels bus system, is accepting proposals from qualified California licensed auditing firms to provide financial auditing services, including the comprehensive annual financial audit, for a three-year period plus four optional one-year extensions.

This project shall include the furnishing of all labor and services as set forth in the Scope of Work section of the Request for Proposal (RFP). A Pre-Proposal Conference will be held at LAVTA, 1362 Rutan Court, Suite 100, Livermore, CA, on December 15, 2016, at 10:00 a.m. Prospective Proposers are highly encouraged to attend this meeting, but attendance is not required.

All Questions and Requests for Clarification must be submitted in writing by December 19, 2016 at 4:00 p.m. Proposals must be received in the LAVTA Administrative Offices by 2:00 p.m. on January 9, 2017. **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. 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.

Firms submitting a proposal to this RFP may be required to give a demonstration and presentation of their proposal to LAVTA from January 16-17, 2017 (estimated date). Engagement staff will be present at the presentation. LAVTA's request for a demonstration or presentation shall not constitute acceptance of a proposal.

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**

Full compliance with all Safety and Health Standards, Equal Employment Opportunity, and Americans with Disabilities Act laws and regulations will be required of the Proposer.

LAVTA intends for this procurement to be primarily conducted electronically via distribution on the procurement page of 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

12/09/16
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

Proposers are invited to participate in a pre-proposal conference to be held at LAVTA, 1362 Rutan Court, Suite 100, Livermore, CA, at 10:00 a.m. on December 15, 2016. LAVTA staff will be on hand to discuss the project scope and answer any questions Proposers may have.

Attendance at this conference is not mandatory, however Proposers are highly encouraged to attend.

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.

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 December 19, 2016.
- (b) Request 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.

1.6 Authority Responses

Responses from the Authority will be posted on the Authority’s website, www.wheelsbus.com by December 21, 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 January 9, 2017. 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

Proposer shall submit five (5) originals AND one (1) electronic version of its proposal on a CD or USB drive, addressed as shown above, bearing the Proposer's name and address and clearly marked as follows:

“LAVTA Financial Auditing Services – RFP #2017-01”

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 Michael Tree, 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 refiling 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 Michael Tree, 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.

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

1.13 Contract Type

Following the completion of all contractual requirements, the Contractor shall provide the services within the approved scope, schedule and price as set forth in the Agreement. (see Exhibit 1 - Sample Agreement).

SECTION II

SCOPE OF WORK

SCOPE OF WORK

FINANCIAL AUDITING SERVICES

1. INTRODUCTION

1.1. Request for Proposals

LAVTA is issuing this Request for Proposals (RFP) soliciting proposals from Certified Public Accountant firms, properly certified to practice in California, to provide financial auditing services including the comprehensive annual financial audit, for a three-year period plus four optional one-year extensions.

LAVTA will utilize the “Best Value” method of procurement, in conformance with applicable procurement guidelines. Respondents to this RFP should demonstrate an understanding of the work to be performed.

1.2. Scope of Work

Livermore Amador Valley Transit Authority

Livermore Amador Valley Transit Authority (LAVTA), also known as Wheels, was formed in 1985 under the provisions of the California Joint Exercise of Powers Act, Government Code Sections 6500 et. seq. and represents the Cities of Livermore, Pleasanton and Dublin as well as the unincorporated portions of eastern Alameda County. LAVTA is responsible for the provision of the public transit fixed route and paratransit service within an approximate 40 square mile service area with a population of approximately 219,247.

Funding Sources

LAVTA receives grants for operating and capital purchases from the State Transportation Development Act (TDA), the Federal Transit Administration (FTA), State Transit Assistance (STA), Regional Measure 2 (RM2) funds, Measure B funds, Measure BB funds, Transit Funds for Clean Air (TFCA), funds and a number of other fund sources.

Accounting Systems

The financial activities of LAVTA are accounted for under the accrual basis of accounting. There are two categories in one general ledger; Fixed Route and Paratransit. Additional categories may be added in FY2017 for Regional Rail, and Wheels on Demand. However, the fiscal year-end Single Report is based on LAVTA's consolidated financial statements.

LAVTA is currently using Multiple Operations Manager (MOM) accounting software, a product of Corbin Willits Systems, Incorporated. It includes General Ledger (GL), Accounts Payables and Payroll. Fixed Assets are maintained in an Excel spreadsheet.

Any Accounts Receivables are manually performed and entered into the GL as a journal entry.

Scope of Services Requested

The Auditor will annually prepare:

- Audits of LAVTA's financial statements
- Issuance of annual independent Auditor's report on financial statements, supplemental information and single audit report
- Independent Auditor's report on Transportation Development Act Compliance
- Independent Auditor's report on Regional Measure B Compliance
- Independent Auditor's report on Regional Measure BB Compliance
- Independent Auditor's report on Proposition 1B Compliance
- Report on internal control over financial reporting and on compliance and other matters performed in accordance with Government Auditing Standards
- Report on compliance with requirements applicable to each major program on internal control over compliance in accordance with Circular A-133
- Preparation of a management letter report on LAVTA's internal accounting controls and other matters affecting its financial condition
- Submission of the independent auditor's position to the Federal Clearinghouse website

Assistance with the preparation of the Comprehensive Annual Financial Report (CAFR)

Key Elements of Work to be Performed

This contract is for an annual audit of LAVTA's financial statements and issuance of a professional opinion concerning the fairness of presentation using the standards applied to financial audits outlined in the Government Standards as issued by the Comptroller General of the United States.

The Auditor may be consulted occasionally throughout the year as an information resource. The Auditor may be asked to provide guidance on implementation of GASB requirements and specifics of Federal and State regulations as they may affect local government accounting.

1. The Auditor will perform a financial and compliance audit on site at LAVTA's facility, 1362 Rutan Court, Livermore, California, 94551 to determine:

- a) whether the combined financial statements of LAVTA present fairly the financial position and the results of financial operations in accordance with generally accepted accounting principals; and
- b) whether LAVTA's financial statements, transactions, contracts, and records, are in compliance with applicable Federal, State, and local laws and regulations applicable to LAVTA, in addition to the Auditor's report on LAVTA's financial statements.

Such compliance requirements include, but are not limited to those promulgated by the:

- Federal Transit Administration (FTA)
- Federal Highway Administration (FHWA)
- State Transit Assistance (STA)
- Transportation Development Act (TDA)
- Metropolitan Transportation Commission (MTC)
- Alameda County Transportation Authority (ACTC)
- Other State/Federal agencies LAVTA has received money from

2. The Auditor will examine LAVTA's internal accounting controls and accounting procedures and render a written report of their findings and recommendations and present them to the LAVTA Board of Directors at a regularly scheduled Board meeting, and to the LAVTA Finance and Administration Committee at their meeting prior to the Board meeting.

3. If the Auditor finds indications of defalcation or other circumstances requiring additional audit time beyond the scope of the examination which would be sufficient under ordinary circumstances, the Auditor will provide LAVTA with all readily ascertainable facts relative to such extraordinary circumstances together with an estimate for the additional cost of investigating same. Fees relating to such additional services are not contemplated as being within the scope of services to be performed under the Scope of Work and will be subject to approval by LAVTA.

4. The Director of Administrative Services and Finance and Grants Manager will be responsible for coordinating the audit process internally. The Auditor will meet on a regular basis with LAVTA to discuss preliminary audit findings.

5. Prior to issuing the final reports, the Auditor will meet with LAVTA staff and address all reports to LAVTA's Board of Directors.

1.3 Required Time for Performance

Period of the Audit

The one-year periods to be audited are from June 30, 2017, June 30, 2018, June 30, 2019, with an option for four one-year extensions from June 30, 2020, to June 30, 2021, to June 30, 2022, to June 30, 2023.

Time Requirements

LAVTA requires a timeline be submitted with the proposer's technical proposal, which should contain detailed information on how the proposer plans to meet the timeline and reporting deadline requirements of this RFP.

1. Draft Reports- the following draft reports are due to LAVTA by October 1st of each year:

- Single Audit Financial Statements- in written format
- Regional Measure B compliance

- Regional Measure BB Compliance
- Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA)compliance
- Management Letter
- Report on compliance with requirements applicable to each major program on internal control over compliance in accordance with Circular A-133
- Independent Auditor’s report on Transportation Development Act Compliance

2. Final Reports- the following final reports are due to LAVTA by the date indicated:

Single Audit Financial Statements- fifteen written copies as well as an electronic file in format suitable for posting to LAVTA web site	Due by October 10 of each year
Regional Measures B and BB compliance	Due by October 10 of each year
Management Letter	Due by October 10 of each year
Auditor’s portion of Federal Clearinghouse web site report	Due by October 10 of each year
PTMISEA	Due by October 10 of each year
Independent Auditor’s report on Transportation Development Act Compliance	Due by October 10 of each year
Report on internal control over financial reporting and on compliance and other matters performed in accordance with Government Auditing Standards	Due by October 10 of each year
Report on compliance with requirements applicable to each major program on internal control over compliance in accordance with Circular A-133	Due by October 10 of each year
Preparation of a management letter report on LAVTA’s internal accounting controls and other matters affecting its financial condition	Due by October 10 of each year

1.4 Payment and Invoicing Instructions

The Authority will inspect all draft and final reports prior to payment. The Authority shall make payment for each draft and final report to the Contractor within 30 days of receipt of proper statements or invoices for the work performed in full conformance with the solicitation requirements, and approved by LAVTA’s Director of Administrative Services.

There will be a ten percent (10%) retention withheld from the final payment for the contract year until all annual services to be provided pursuant to the RFP have been accepted as completed by LAVTA’s Director of Administrative Services.

Payments for all items shall include taxes, storage, transportation, warranty, insurance, materials, profit and all other costs associated with provision of the services.

All invoices should be sent to: Accounts Payable
 Livermore Amador Valley Transit Authority
 1362 Rutan Court, Suite 100
 Livermore, CA 94551

1.5 Working Paper Retention and Access to Working Papers

All working papers and reports must be retained, at the Consultant's expense, for a minimum of three years after the end date of the year audited, unless the firm is notified in writing by the Authority of the need to extend the retention period. The Consultant is required to make working papers available at no cost, upon request, to the following parties or its designees:

1. The Authority
2. Federal Transit Administration (FTA)
3. U.S. General Accounting Office (GAO)

2.0 ADDITIONAL REQUIREMENTS

2.1 Insurance

The insurance requirements specified in this section shall apply to Contractor and any subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that Contractor authorizes to work under this Agreement (hereinafter collectively referred to as “Agents”). Contractor and all Agents are required to procure and maintain at their sole cost and expense the insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of this Agreement. To the extent that any Agent does not procure and maintain such insurance coverage, Contractor shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling Contractor’s indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event Contractor 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 Contractor’s insurance be primary without any right of contribution from the Authority. Prior to beginning work under this contract, Contractor 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 Contractor'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 Contractor, 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 Contractor performs under the Agreement. The policy limits of this professional liability insurance policy shall apply separately to the Agreement.

B. ENDORSEMENTS

A. 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 Contractor. Said policy shall protect Contractor 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, Contractor 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 Contractors' 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 Contractors' 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 Contractor's agreement to waive subrogation against the Authority respecting any and all claims that may arise, Contractor'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 Contractor'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 Contractor's start of work (including subsequent policies purchased as renewals or replacements).

- b. Contractor shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all named insureds.
- c. If insurance is terminated for any reason, Contractor agrees to purchase an extended reporting provision of at least 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

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

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

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 proposed approach to meet LAVTA's requirement for financial auditing services.

Proposals should be limited to specific discussion of the elements outlined in this RFP. Responders 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. Responders are encouraged to submit proposals that best address the evaluation criteria outlined in Section IV, Evaluation and Award, subsection 1.1.

The organization of the proposal should follow the general outline below. The Technical Proposal section should not exceed 10 pages excluding any appendices.

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. 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) A brief description of the Proposer's qualifications for furnishing the financial auditing services, including the organization, size and years in business. A statement that the firm is properly licensed to practice as a Certified Public Accountant firm in California and that all assigned key personnel are properly certified to practice in California. A statement that the firm meets the independence requirements of the Standards for Audit of Government Organizations, Programs, Activities, and Functions published by the Comptroller General of the United States.
- b) Experience – This section should contain a concise description of the proposer's background and experience in providing auditing services to governmental organizations 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 also demonstrate proposer's:

- Knowledge of and experience with accepted auditing standards set forth for financial audits in the U.S. Government Accountability Office's (GAO) Government Auditing Standards (GAS), the provisions of the Federal Single Audit Act and the U.S. Office of Management

- and Budget (OMB) Circular A-133 Audits of States, Local Governments, and non-profit organizations.
 - Demonstrated familiarity with the Uniform Systems of Accounts (USOA) as prescribed by the Federal Transit Administration (FTA).
 - Knowledge of and experience with enterprise fund accounting systems.
- c) Resumes of Key Personnel – this section should contain resumes for key personnel identified as being assigned to the LAVTA contract and does not count toward the page limit referenced above. The resume should feature all job experience over the past three years including:
- Positions held
 - Primary responsibilities and length of employment and locations for each position
 - Education
 - Professional registrations or certifications
 - Professional affiliations
 - Key skills
 - Years employed by proposer
 - Total years of professional experience in providing financial auditing services
 - Current assignment and location
- 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.
- 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.
 - 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

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

- a) A complete work plan that addresses each aspect of the Scope of Work as defined in this RFP, including time estimates for each significant segment of the work and the project schedule indicating milestones reached in order to meet the completion dates for each major task in the Scope of Work.

- 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.

1.6 Price Proposal

The Proposer shall use the Price Proposal Form provided in Appendix A. The price proposal shall include everything necessary for the completion of and fulfillment of the contract including, but not limited to, materials, equipment, and all management, superintendence, labor and services and all applicable federal, state, and local taxes.

1.7 Supporting Documentation (No Page Limit)

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

1.8 Completed Required Forms (Provided in Appendix A)

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

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

The Authority will evaluate the Proposals received based on the following criteria:

Criteria	Scoring
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
Proposer's qualifications and experience.	20 points
Qualifications, knowledge and experience of proposers' key personnel.	20 points
Technical Proposal.	20 points
Financial stability and references.	15 points
Reasonableness of Grand Total Proposed Price	25 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.

After evaluating proposals based upon the criteria above, the Evaluation Committee will develop a list of top-ranked proposals within a competitive range, based upon the totals of each Committee members' score for each proposal. At this time, proposers may be asked to submit a Revised Proposal. In a request for Revised Proposals, firms may be asked to provide additional information, confirm or clarify issues and submit a final price offer. A deadline for submission will be stipulated. LAVTA may not require a Revised Proposal, so proposers should submit their best proposal in the initial response.

1.3 Award

The Authority may negotiate contract terms with the selected Proposer prior to award, and expressly reserves the right to negotiate with several Proposers simultaneously and, thereafter, to award a contract to the Proposer offering the most favorable terms to the Authority. LAVTA reserves the right to determine the best value to the Authority through this competitive process using highest weighted score analysis technique.

Negotiations may or may not be conducted with Proposers; therefore, the proposal submitted should contain Proposer's most favorable terms and conditions, since the selection and award may be made without discussion with any Proposer.

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
Financial Auditing Services
RFP # 2017-01

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 "Financial Auditing Services Proposal"). The five sets of a proposer's proposal must be submitted as follows:

One original proposal with required signatures in ink by an officer of the proposer with the authority to bind the proposer to the terms of the RFP submitted in a separate securely sealed envelope marked as follows:

ORIGINAL: FINANCIAL AUDITING SERVICES PROPOSAL

Proposers are warned against making erasures or alterations of any kind without initialing each and every change.

Four sets of copies of the proposal submitted in a separate securely sealed envelope marked as follows:

COPY: FINANCIAL AUDITING SERVICES PROPOSAL

One electronic copy of the PROPOSAL on CD or USB drive.

The sealed box shall, prior to 2:00 pm Pacific Time on January 19, 2017, 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 #2017-01

The following lump sum proposal prices 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.

Total Price per Audit:	Year 1	\$ _____
	Year 2	\$ _____
	Year 3	\$ _____
	Option 1	\$ _____
	Option 2	\$ _____
	Option 3	\$ _____
	Option 4	\$ _____
GRAND TOTAL PRICE:		\$ _____

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 Financial Auditing Services.

RFP # 2017-01

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

EXHIBIT 1

PROPOSED LAVTA AGREEMENT

SAMPLE

THIS AGREEMENT, ("Agreement") made and entered into this ___ day of ___, 2017 by and between the **Livermore Amador Valley Transit Authority** (Authority), and _____ (Consultant).

WITNESSETH

WHEREAS, Authority desires to obtain a **Financial Auditing 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 Financial Auditing Services and has submitted a proposal dated _____, 2017 (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.

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

The Consultant shall complete all work under this Agreement each year pursuant to the schedule provided in Attachment 1.

The term of this Agreement will be for a term of three years commencing upon the Effective Date of the Agreement.

The Authority reserves the right, in its sole discretion, to exercise up to four one-year option term(s) to extend the Agreement, pursuant to the terms of Section 4, Compensation. If the Authority determines to exercise the option term(s), the Authority will give the Consultant at least 30 days' written notice of its determination.

It is understood that the term of the Agreement, and any option term granted thereto as specified herein are subject to the Authority's right to terminate the Agreement in accordance with Section 12 of this Agreement.

4. COMPENSATION AND METHOD OF PAYMENT

The Consultant agrees to perform all of the services included in Section 2 for the following total not-to-exceed fees listed below in accordance with Attachments 1

and 2. The total all inclusive sum shall include all labor, materials, taxes, profit, overhead, insurance, subcontractor/subconsultant costs and all other costs and expenses incurred by the Consultant.

- | | |
|-------------|----------|
| 1. Year 1 | \$ _____ |
| 2. Year 2 | \$ _____ |
| 3. Year 3 | \$ _____ |
| 4. Option 1 | \$ _____ |
| 5. Option 2 | \$ _____ |
| 6. Option 3 | \$ _____ |
| 7. Option 4 | \$ _____ |

Consultant services shall be billed in accordance with Attachment 1. The Authority will make payment in accordance with the payment and invoicing instructions provided in Attachment 1. Invoices shall be made in writing and delivered or mailed to Authority 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 3. 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 or to defects in design furnished by Authority or that arise from the active negligence 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. 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.

14. 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.

15. 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 :

16. NON DISCRIMINATION

Consultant (and any subcontractors) shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. Consultant (and any subcontractors) shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by Consultant (and any subcontractors) to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Authority deems appropriate.

17. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The Consultant shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. BENEFIT OF AGREEMENT

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

24. 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.

SAMPLE

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).