

# REQUEST FOR PROPOSALS

## LAVTA LEGAL SERVICES #2023-04

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

<b>RFP Issued:</b>	<b>June 14, 2023</b>
<b>Pre-Proposal Conference: (Optional)</b>	<b>June 28, 2023 by Zoom</b>
<b>Written Questions/Requests for Clarifications (RFCs) Due:</b>	<b>July 5, 2023 at 2:00 <u>PM</u></b>
<b>LAVTA's Response to Questions/RFCs Provided:</b>	<b>By July 16, 2023</b>
<b>Proposals Due:</b>	<b>July 26, 2023 at 2:00 <u>PM</u></b>

**Contact Info: Tamara Edwards**  
**Director of Finance**  
**(925) 455-7566**  
**[procurements@lavta.org](mailto:procurements@lavta.org)**

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**1. INVITATION**

The Livermore Amador Valley Transit Authority (LAVTA) is seeking proposals from qualified firms (Proposers or Consultants) to provide General Counsel for LAVTA primarily consisting of Legal Services (Services).

LAVTA, subject to Board of Directors' approval, intends to award a three-year base term contract, with up to four additional one-year, optional terms, for Services to one or more successful Proposer(s). The successful Proposer(s) will execute an Agreement for Services. Please refer to Appendix B.

LAVTA intends to adhere to the following solicitation timeline, which is subject to change at LAVTA's sole discretion:

**Solicitation Timeline**

<b><u>Activity</u></b>	<b><u>Date</u></b>
RFP Issued	<b>June 14, 2023</b>
Pre-Proposal Conference	<b>June 28, 2023 at 1:00 p.m.</b>
Questions and RFCs Due	<b>July 5, 2023 prior to 2:00 p.m.</b>
Agency's Response to Questions/RFCs	<b>July 16, 2023 by end of business</b>
<b>Proposals Due</b>	<b>July 26, 2023 prior to 2:00 p.m.</b>
Interviews (if required)	<b>August 11, 2023, if needed</b>
Contract Award (tentative)	<b>September 11, 2023</b>
Notice to Proceed (tentative)	<b>September 29, 2023</b>

Proposals will be received via email to Tamara Edwards at [procurements@lavta.org](mailto:procurements@lavta.org) until 2:00 p.m. on July 26, 2023. Hard copy submissions will NOT be accepted. Hard copies received will be returned (unopened) to Proposers without consideration. However, upon request, copies of the RFP may be obtained by contacting LAVTA at (925) 455-7555.

For questions regarding this RFP, please contact Tamara Edwards at [procurements@lavta.org](mailto:procurements@lavta.org)

\_\_\_\_\_  
**Tamara Edwards**  
Director of Finance

\_\_\_\_\_  
Date

## 2. **INTRODUCTION**

### A. **Summary and Term**

The Services to be provided to LAVTA consist of the following:

LAVTA is issuing this Request for Proposals (RFP) soliciting proposals from qualified attorneys and law firms to act as General Counsel for LAVTA and to provide legal services.

For detailed information regarding the required Services, please refer to Appendix A to this RFP.

If approved by the LAVTA Board of Directors, the successful Proposer will execute an Agreement for a three- year base term with up to four additional one-year optional terms.

### B. **Background Information**

LAVTA was established in 1985, under a Joint Powers Agreement to provide public transit in the cities of Dublin, Livermore, Pleasanton, and in unincorporated areas of Alameda County. LAVTA's mission is to provide equal access to a variety of safe, affordable and reliable public transportation choices, increasing the mobility and improving the quality of life of those who live or work in and visit the Tri-Valley area. These include bus connections to Bay Area Rapid Transit (BART), Altamont Commuter Express (ACE) and Central Contra County Transportation Authority (County Connection). Wheels, operated by LAVTA, plays a vital role in providing transportation and mobility options for those who do not drive, either by choice or necessity. Wheels connects people to work, school, medical appointments, and to recreational opportunities.

## 3. **PROPOSAL CONTENT**

### A. **Proposal Cover Form**

In order to facilitate Proposer's preparation of its proposal and LAVTA's review of same, all proposals must have a consistent font type and size of text; and must be: 60 or fewer letter-size pages (8.5 inch by 11 inch), single spaced, and single column (excluding the Proposal Cover Form, Letter of Introduction, Table of Contents, two-page resumes of key nominated personnel, and other required appendices and forms). Type style and size for graphics is at Proposer's option, but the font must be clear and legible.

Submission of a proposal indicates acceptance by a firm of the conditions contained in this RFP unless clearly and specifically noted in the proposal submitted and confirmed in the Agreement between LAVTA and the firm selected.

In order to be accepted for evaluation, proposals should provide the requested information in a concise, well-organized manner and must follow the prescribed format as outlined below.

### B. **Letter of Introduction**

The Letter of Introduction, which must be on company letterhead and signed by an authorized individual, must introduce the firm and summarize its qualifications; identify its proposed key personnel to be assigned to this Agreement, and summarize the main qualifications of the proposed team.

Proposers must also indicate that they are prepared to sign the Sample Agreement provided in Appendix B to this RFP (or should specifically identify any requested changes to the Agreement, using the form provided in Exception Form, Exhibit 2; and must clearly state that they are able to meet the insurance requirements as set forth in Appendix C, Insurance Requirements. Proposers must also state in writing that they agree to be bound by their proposal for 180 days from the

proposal due date. Proposers must also confirm that they have no impermissible conflicts of interest.

If the Proposer is a joint venture, an executed copy of the Joint Venture Agreement must be included with the proposal. The specific areas of responsibility (including administrative, technical, and financial) for each member of the Joint Venture must be outlined.

**C. Table of Contents**

Include a Table of Contents displaying the organization of the proposal being submitted.

**D. Approach to Providing Services: Team Organization and Management Plan**

Identify the key personnel and staff, including subconsultants, if any, who will be directly engaged in the performance of the work under the Agreement; and outline the Proposer's team's capacity to successfully perform the desired services and include the following:

1. Organization chart showing the proposed team composition.
2. Identification of any and all of the services listed in Appendix A, Scope of Services for which Proposer intends to subcontract, including the intended subconsultant's name, location, key personnel, and their qualifications.
3. Describe understanding of, and rationale for, proposed intended approach to providing the work required under Appendix A

Additionally, Proposer must address the following aspects of these procedures in its proposal:

i. Identification of Subconsultants

A Consultant intending to use any subconsultants to perform Services must do so in accordance with the requirements of this RFP. Any and all subconsultants must be listed on the Designation of Subconsultants form, Exhibit 3, submitted with the proposal and approved by LAVTA prior to contract award. The Consultant must have prior written approval by LAVTA if it intends to use additional subconsultant(s) that were not approved prior to contract award.

After contract award, LAVTA's written approval of additional subconsultant(s) must be granted.

ii. Quality Control Plan

Describe how Proposer will ensure that the quality of task management and work product, either from the firm or subconsultant, is within criteria set forth by LAVTA. Describe at a minimum the approach to quality, strategy development, data analysis, subconsultant management, quality control of deliverables, schedule, budget compliance, staff management, and invoice preparation.

**E. Company Qualifications, Experience & References**

In order to be considered for award of an Agreement, each Proposer must provide information about its company so that LAVTA can evaluate the firm's stability and ability to support the commitments set forth in response to the RFP. In addition, the Proposer must have expertise in the tasks specified in Appendix A. LAVTA, at its option, may require a Proposer to provide additional information and/or clarify submitted information. To be considered qualified for consideration of award of an Agreement, Proposers must:

1. Have (through themselves, their team members or their sub-consultants) at least five (5) years of experience providing legal counsel to public transit or transportation agency;
2. Be capable of providing the desired services as delineated in the Scope of Services, substantially with its own staff without numerous conflicts of interests;
3. Have knowledge and understanding of transit-related regulations and codes, and be familiar with local, state and federal rulemaking relating to transit.

Additionally, Proposers must provide a minimum of three and a maximum of five references of clients for whom, within the past five years, the Proposer has provided similar services as those called for in this RFP. Include transportation agencies, if any. For each submitted Reference Form (see Exhibit 4), Proposers must supply a brief description of the services provided, the timeframe the services were provided, and current client contact information. Proposers must also provide the size and structure of their firm as evidenced by an organizational chart, relevant to its client base.

Do not list LAVTA as a reference. However, if Proposer has provided services to LAVTA, such experience will be considered by LAVTA in its evaluation.

If the Proposer is a joint-venture partner, describe the organizational arrangement and roles and responsibilities between the firms. Each Proposer must submit sufficient evidence satisfactory to LAVTA that the Proposer is in compliance with this section.

**F. Qualifications and Experience of Key Personnel**

"Key Personnel" is defined as those individuals who are essential to the successful completion and execution of the Services called for in this RFP. Key Personnel must be available for the duration of the engagement and may not be substituted by Consultant without prior written approval by LAVTA. Substitution of Key Personnel without prior written approval by LAVTA will constitute a breach of the Agreement. LAVTA reserves the right to direct the removal of any individual, including Key Personnel.

Each Proposer must submit resumes of Key Personnel and an organization chart that identifies the proposed team's structure and reporting responsibilities. If the Proposer is a multi-firm team, describe the organizational arrangement and roles and responsibilities between the firms. Work that subcontractors will perform, if any, should be indicated on a task basis.

This information must indicate sufficient evidence satisfactory that proposed Key Personnel have the skills, qualifications, and experience to successfully complete the Services as further described herein and in Appendix A, Scope of Services. Proposers must describe the depth and quality of previous experience and number of years providing similar services for all proposed Key Personnel.

**G. Financial Qualifications**

Each Proposer must possess sufficient financial strength, resources and capabilities to support and enable the work to be performed and to complete the Agreement in a satisfactory manner, as measured by Proposer's financial statements (Income Statements and Balance Sheets, only) for the previous three (3) years. Financial statements must be prepared in accordance with generally accepted accounting principles of the jurisdiction in which the Proposer is located, and audited by an independent certified public accountant. Proposer must state how the desired financial information will be provided for review by LAVTA.

In addition, Proposers must demonstrate their ability to obtain insurance coverage that meets the minimum requirements of this RFP, as evidenced by a letter, or a certificate, from an underwriter confirming that the Proposer can be insured for the required amounts. At LAVTA's discretion, Proposers who are involved in current or pending bankruptcy proceedings may be rejected.

**H. Cost Proposal**

All pricing, cost and rate information must be uploaded using the Cost Proposal Form, Exhibit 5. Proposers must complete and submit a Labor Rates Form for their firm and each proposed subconsultant. Proposer's failure to submit the required Labor Rates Form may result in rejection of the proposal. In the event that the execution of the contract occurs in a subsequent fiscal year from the fiscal year of the proposal submission, successful Proposer(s) may request approval for labor rates to be adjusted for the new fiscal year, subject to a CPI increase based on year over year CPI increase determined for June each year. or up to a maximum of 3.5 percent escalation, whichever is lower.

1. Proposer must list all reasonably foreseeable personnel required in the performance of this work, except those considered as overhead, as defined in the Sample Agreement. Proposer must identify the names, titles, actual direct labor hourly rates, direct cost rates, exclusive of any burden or mark-ups for all proposed staff and subconsultant staff on the Cost Proposal Form.
2. Proposers must also use the Cost Proposal Form to submit proposed maximum fees (profit) as a percentage of the overhead burdened Direct Cost for Labor. The fees listed on the form are maximum fees and Proposers may offer lower fee rates. A fee proposed by subconsultant must not exceed that of the Proposer.

**I. Levine Act**

The Levine Act (Government Code 84308) is part of the California Political Reform Act of 1974. The Levine Act prohibits any LAVTA Board Member from participating in or influencing the decision on awarding a contract with LAVTA to anyone who has contributed \$250.00 or more to the Board Member within the previous twelve months. The Levine Act also requires a member of the LAVTA Board who has received such a contribution to disclose the contribution on the record of the proceeding. In addition, LAVTA Board Members are prohibited from soliciting or accepting a contribution from a party applying for a contract while the matter of awarding the contract is pending before LAVTA or for twelve months following the date a final decision concerning the contract has been made.

Proposer must complete and submit with their proposal the California Levine Act Statement, Exhibit 6.



**J. Licenses and Certifications**

Proposer and proposed Key Personnel must hold, and maintain during the course of the contract including any option extensions, appropriate professional licenses to perform the work specified in this RFP. Proposers may list any relevant licenses and/or certifications and the name of the issuing entity with their proposal. Copies or proof of such licensure and/or certification may be requested by LAVTA.

**K. Conflicts of Interest**

The firm selected to serve as Consultant through this RFP will not be prohibited from working under separate contracts with LAVTA, unless such work creates a conflict of interest, real or apparent, that would render the Consultant ineligible to undertake such work during the term of the Agreement. Proposer must provide a list in its proposal of its current contracts that involve work with LAVTA, including its relationship to LAVTA and a brief description of its job under the contract. Proposer must identify any potential conflicts that may compromise its delivery of unbiased work product.

Proposer must also describe any potential conflicts of interest that could limit the Proposer's ability to provide the Services, including representation of other transit-related clients with which LAVTA may do business.

By submitting a proposal, the Proposer represents and warrants that no director, officer or employee of LAVTA is in any manner interested directly or indirectly in the proposal or in the Agreement that may be made under it or in any expected profits to arise therefrom, as set forth in Article 4, Division 4, Title I (commencing with Sec. 1090) of the Government Code of the State of California. The Proposer warrants and represents that it presently has no financial interest and agrees that it will not acquire any financial interest which would present a conflict of interest under California Government Code Sections 1090 *et seq.* or Sections 87100 *et seq.* during the performance of services under this Agreement. The Proposer 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.

**4. SOLICITATION PROCESS**

**A. Pre-Proposal Conference**

A Pre-Proposal Conference will be held via Zoom. Attendance at this meeting is optional, but is **highly recommended**. The meeting will consist of a review of the solicitation process, requested services and required proposal submittals. The meeting is anticipated to take up to one (1) hour. Please refer to the solicitation timeline in the Invitation for date and time. Instructions to attend the meeting electronically are as follows:

1. Via Zoom:
  - i. Click "Join" in upper right hand corner
  - ii. Enter **Meeting Number:** 884 7180 7535
  - iii. Enter **Meeting Password:** RFP 1362
  - iv. Enter the required contact information
  - v. Click the "Join" button after entering the above information

The RFP Documents are available for download on LAVTA's website, <https://www.wheelsbus.com/about/doing-business/>.

**B. Submission of Questions and Requests for Clarification**

All Questions and/or Requests for Clarification must be submitted in writing by email to Tamara Edwards at [procurements@lavta.org](mailto:procurements@lavta.org). LAVTA's written response to Questions and/or Requests for Clarification will be posted on the LAVTA website ([www.wheelsbus.com](http://www.wheelsbus.com)). Please refer to the solicitation timeline in the Letter of Invitation in this RFP for date and time deadlines.

**C. Addenda to RFP**

**LAVTA reserves the right to amend this RFP at any time. Any amendments to or interpretations of the RFP must be described in written addenda.**

It is the Proposers' responsibility to monitor LAVTA's website. Only signed addenda, issued by LAVTA's authorized personnel are binding. Proposers are required to acknowledge receipt of all addenda, if any, during the submission of their proposals.

Failure of any prospective Proposer to receive the notification or addenda does not relieve the Proposer from any obligation under the RFP as clarified, interpreted or modified. All addenda issued must become part of the RFP. Proposers must acknowledge the receipt of each individual addendum in their proposals on the Proposal Cover Form, Exhibit 1. Proposer's failure to acknowledge in its proposal receipt of addenda may, at LAVTA's sole option, cause the proposal to be rejected.

If LAVTA determines that the addenda may require significant changes in the preparation of proposals, the deadline for submitting the proposals may be postponed by the number of days that LAVTA determines will allow Proposers sufficient time to revise their proposals. Any new due date will be included in the addenda.

**D. Submission of Proposals**

Proposals will be received via email to Tamara Edwards at [procurements@lavta.org](mailto:procurements@lavta.org) until 2:00 p.m. on July 26, 2023. Hard copy submissions will NOT be accepted. Hard copies received will be returned (unopened) to Proposers without consideration. However, upon request, copies of the RFP may be obtained by contacting LAVTA at (925) 455-7555.

**E. Cost of Proposal Development**

This RFP does not commit LAVTA to enter into an Agreement, to pay any costs incurred in the preparation or presentation of a proposal, nor to procure or contract for any services. The Proposer waives any claim against LAVTA for costs incurred in preparing a proposal and responding to this RFP.

**F. Validity of Proposals**

Submission of a proposal constitutes a firm offer to LAVTA for 180 days from the submission deadline for proposals.

**G. Withdrawal of Proposals**

A Proposer may withdraw its proposal, without prejudice, by emailing [procurements@lavta.org](mailto:procurements@lavta.org) prior to the proposal closing date and time. The withdrawal of a proposal does not prejudice the right of a Proposer to submit another proposal within the time set for receipt of proposals.

After the proposal due date, a proposal may be withdrawn only if LAVTA fails to award the Agreement within the proposal validity period prescribed above in Section 4.G., Validity of Proposals, or any agreed-upon extension thereof.

**H. Evaluation of Proposals and Selection Process**

Proposals will be screened to ensure Proposer(s)' responsiveness to the requirements of the RFP and the responsibility of the proposing consultant. A proposal will be considered responsive only if it complies in all material respects to the requirements of the RFP. LAVTA intends to award a contract to the highest ranked, most qualified, responsible Proposer that submits a responsive proposal for provision of the Services.

LAVTA may reject as non-responsive any proposal that does not include the required documents referenced herein. However, LAVTA reserves the right to request additional information and clarifications during the evaluation and selection process from any or all Proposers regarding their proposals.

**1. Selection Committee**

A Selection Committee (Committee), which will include members of staff, a member of the LAVTA Board of Directors, and possibly one or more outside experts, will review the technical proposals submitted and rank them according to the weighted criteria of each category as set forth in the process below.

The Committee's composite scores for all steps of the evaluation process will comprise the official record for the proposal evaluation process; individual evaluation records will not be available for public inspection at any point during or after the evaluation process. By submitting a proposal, Proposers agree to be bound by these terms and will not later challenge said terms.

**2. Proposal Evaluation Process**

The Proposers' proposal will be evaluated utilizing the criteria identified below. In ranking proposals, LAVTA will consider the proposal material submitted, oral interviews (if any are held) and any other relevant information about a given Proposer (i.e. references). LAVTA will not assume that a Proposer possesses any capability unless such a capability is established by the submitted proposal.

Proposals will be evaluated using the Evaluation Criteria described below and assigned points per criteria as indicated:

Evaluation Criteria	Max Points
<p><b>Company Qualifications, Experience &amp; References</b></p> <p>A. Demonstrate that the firm meets all the requirements set forth in Section 3.E.</p> <p>B. Size of firm and years in business</p> <p>C. Experience in providing similar relevant services; identifying how such services relate to this solicitation, the dollar value and the references provided</p>	<p>30</p>

Evaluation Criteria	Max Points
D. Experience in successfully managing work schedules and controlling costs	
<p><b>Qualifications and Experience of Key Personnel</b></p> <p>A. The professional, technical and managerial qualifications and experience of personnel named in the proposal, including the proposed Project Manager</p> <p>B. Previous relevant experience which demonstrates capability to successfully manage work</p> <ol style="list-style-type: none"> <li>1) Years of experience</li> <li>2) Extent of experience applicable to this work</li> <li>3) Experience in key staff positions</li> <li>4</li> </ol>	25
<p><b>Understanding of Agency Needs</b></p> <p>A. Approach to the scope of services as noted in Appendix A, Scope of Services</p> <p>B. Rationale for proposed team organization</p> <p>C. Subconsultant Management Plan, if applicable</p>	25
<p><b>Conflict of Interest Approach</b></p> <p>This portion of the proposal will be evaluated on the proposed approach to managing conflicts of interests with shared clients, if applicable.</p>	5
<p><b>Reasonableness of Cost</b></p> <p>This portion of the proposal will be evaluated based on reasonableness of the proposed Labor Rates (including, but not limited to, the proposed hourly labor rates, overhead rates, profit fees, and/or billing rates) as submitted on the Cost Proposal Form, Exhibit 5.</p> <p>Rates will be compared to rates LAVTA or other comparable public agencies have paid for similar services, and in accordance with what is considered to be the industry's standard and customary costs for the services. Proposed costs will also be compared to any independent cost estimates.</p>	15
<b>Total =</b>	100

**I. Interviews**

Following the initial review and screening of proposals, one or more Proposers may be invited to participate in the next step of the selection process. This step may include the submission of additional information, as described below, and/or participation in an oral interview. If LAVTA conducts interviews, it will do so with those Proposers found to be within the “competitive range.” Attendees at an interview should be restricted to those individuals who will have direct

involvement with provision of the Services. LAVTA expects that, at a minimum, the proposed Project Manager will attend the oral interview; other Key Personnel may also attend. Please refer to the solicitation timeline in the Invitation for tentative interview dates.

**J. Revised Proposals, Interviews and Negotiations**

LAVTA reserves the right to negotiate with any individual(s) or qualified firm(s), to request revised proposals, to visit the Proposer(s)' site(s), to interview or not, or to request best and final offers (BAFOs), if it is in the best interest of LAVTA to do so. During this step, the Committee will evaluate financial statements and audit reports submitted by Proposers in the competitive range. Upon completion of this step in the selection process, the Committee will re-rank the firms remaining in the competitive range, in accordance with the evaluation criteria set forth above.

LAVTA also reserves the right to further reduce the competitive range at any time during this step of the evaluation and selection process and LAVTA may hold simultaneous discussions with those proposers that remain in the competitive range. Proposers who are no longer in the competitive range, and will therefore not continue to the final step of the selection and evaluation process, will be notified as soon as it is practicable.

LAVTA may accept the proposal, or may negotiate with the highest-ranked firms, the terms and conditions of the Agreement and/or the firms' cost proposal including, but not limited to, the proposed hourly labor rates, overhead rates, profit, fees, and/or billing rates as applicable. At this time, LAVTA may elect to request revised and/or best and final offers (BAFOs) from all of the firms remaining in the competitive range. At its sole discretion, LAVTA may also reject all proposals. LAVTA also may award an Agreement without conducting interviews or negotiations.

**K. Contract Award**

The Committee will make a recommendation of award of Agreement, if any, to LAVTA's Board of Directors, or designee. All Proposers will be notified of the recommended award in writing. No Agreement will be in force until a written authorization to proceed is issued by LAVTA's authorized personnel.

The successful Proposer, to whom award is made, must execute a written Agreement for Services on LAVTA's provided form as set forth in Appendix B within 14 calendar days after Proposer receives the form of Agreement for execution.

**L. Protest Procedures**

Protests Based Upon the Specifications

Protests based upon restrictive specifications or alleged improprieties in this Request for Proposals, which are apparent or reasonably should have been discovered prior to the proposal due date, shall be filed in writing with LAVTA's Executive Director, within five (5) calendar days before proposals are due. The protest must clearly specify in writing the name and address of the protestor, this Request for Proposals, and the grounds and evidence on which the protest is based. If the protestor later raises new grounds or new evidence that reasonably could have been raised in the original protest submission, LAVTA will not consider such new grounds or evidence in the determination on the protest. LAVTA shall issue a written decision on the protest prior to the proposal due date. Where the determination could affect proposals, an appropriate extension of the proposal due date may be granted by LAVTA. If the protest is denied, the proposer may appeal the determination to the Board. The proposer must notify the Executive Director of its intent to resubmit the protest to the Board no later than five (5) calendar days after proposals are due. The notice must state the reasons for the protest and document that the protestor exhausted all administrative remedies at the staff level.

### Protests Based Upon Contract Award

Protests based upon alleged improprieties that are not apparent or which could not reasonably have been discovered prior to the proposal due date, such as disputes over the staff recommendation for contract award, shall be submitted in writing to Executive Director within forty-eight (48) hours from receipt of the notice advising of the staff's recommendation for award of contract.

The protest must clearly specify in writing the name and address of the protestor, this Request for Proposals, and the grounds and evidence on which the protest is based. If the protestor later raises new grounds or new evidence not previously set forth in written submissions that reasonably could have been raised, LAVTA will not consider such new grounds or evidence in the determination on the protest. Staff shall analyze the protest and respond with a written determination. If the protest is denied, the proposer may pursue its protest to the Board. The proposer must notify the Executive Director of its intent to resubmit the protest to the Board no later than 24 hours from receipt of the notice advising of staff's determination. The notice must state the reasons for the protest and document that the protestor exhausted all administrative remedies at the staff level.

Proposers resubmitting a protest to the Board for appeal shall have an opportunity to appear and be heard before the Board prior to final award of the contract.

**Failure to comply with the rules set forth herein may result in rejection of the protest.** Copies of the complete protest procedures are available from LAVTA's Administrative Offices.

### **M. Ex-Parte Communications**

Proposers and Proposers' representatives must communicate in the manner set forth in this RFP. All such communication must be directed to the Procurement Officer named in this RFP until after a Notice to Proceed has been issued by LAVTA. There must be no communication with any officer, director, employee, or agent of LAVTA, except as may be reasonably necessary to carry out the procedures specified in this RFP.

Proposers and Proposers' representatives may not communicate with LAVTA's Board members except in writing and if the communication is made public. Nothing herein prohibits Proposers and their representatives from making oral statements or presentations in public to one or more representatives of LAVTA during a public meeting.

### **N. Confidentiality**

1. Confidentiality and Waiver of Claims
  - i. The California Public Records Act (Cal. Govt. Code Sections 7920.000 et seq.) (CPRA) mandates public access to government records. Therefore, unless the information is exempt from disclosure by law, the content of the proposal, as well as any other written communication between LAVTA and the Proposer, is a public record that must be made available to the public.
  - ii. If the Proposer believes any communication contains information exempt from disclosure under the CPRA, including trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer must request that LAVTA withhold from disclosure the exempt information by submitting:

- (a) an unredacted copy of the proposal marking each page containing such exempt information as confidential; and
  - (b) a redacted copy of the proposal that redacts the purportedly exempt information; and
  - (c) a separate “confidentiality index” including all of the following information:
    - (i) The section and page number of the proposal where the information is located; and
    - (ii) An explanation of why the information is exempt from disclosure under the CPRA.
- iii. By submitting a proposal, Proposer:
- (a) consents to the release of the redacted version of the proposal; and (ii) consents to the release of any portion of its proposal not included in the confidentiality index; and
  - (b) waives all claims against LAVTA, its directors, officers, employees and agents, for the disclosure of such information.
- iv. If the Proposer does not include a confidentiality index in its proposal, LAVTA will have no obligation to withhold any information from disclosure and may release the information sought without liability to LAVTA.
- v. In the event of conflicts between the redacted version, the confidentiality index, and confidentiality designations in the body of the proposal, the redacted version prevails.
- vi. A Proposer may not designate its entire proposal as confidential. LAVTA will not honor such designations and will disclose submittals so designated to the public without liability to LAVTA.

## 2. Confidentiality Indemnity

Upon receipt of a request pursuant to the CPRA seeking proposal material relating to this RFP, LAVTA may provide the redacted version of the proposal, or may withhold material designated in the confidentiality index that is exempt from disclosure. If LAVTA determines that information in the confidentiality index is not exempt from disclosure, LAVTA will give reasonable notice to the Proposer prior to releasing any material listed in the confidentiality index.

By submitting a proposal, Proposer agrees to indemnify, defend, and hold harmless LAVTA, its directors, officers, employees and agents, from any 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 cost and expenses, including attorneys’ fees, related to the withholding of the information included in the confidentiality index or in the redacted version of the proposal. If Proposer fails to accept a tender of a defense, LAVTA reserves the right to resolve all claims at its sole discretion, without limiting any rights stated herein.

**O. Waiver**

By submitting a proposal, the Proposer represents and warrants that it has sufficiently informed itself in all matters affecting the performance of the work or the furnishing of the labor, supplies, material, or equipment called for in the Agreement; that Proposer has checked its proposal for errors and omissions; that the prices stated in its proposal are correct and as intended by it and are a complete and correct statement of its prices for performing the work or furnishing the labor, supplies, materials, or equipment required by the Agreement.

**P. LAVTA's Rights**

LAVTA reserves the right to cancel the procurement in whole or in part, at its sole discretion, at any time before the Agreement is fully executed and approved on behalf of LAVTA. This RFP does not commit LAVTA to award an Agreement, to pay any costs incurred in the preparation of the proposal for this request, or to procure or contract for services. LAVTA reserves the right to modify or cancel in whole or in part this RFP, to reject any and all proposals, to accept the proposal it considers most favorable to LAVTA's interest in its sole discretion, and to waive irregularities or informalities in any proposal or in the proposal procedures. LAVTA further reserves the right to reject all proposals and seek new proposals when LAVTA considers such procedure to be in its best interest.

If there is any evidence indicating that two or more Proposers are in collusion to restrict competition or are otherwise engaged in anti-competitive practices, the proposals of all such Proposers must be rejected, and such evidence may be a cause for disqualification of the participants in any future solicitations undertaken by LAVTA.

**5. CONTRACTUAL REQUIREMENTS**

**A. Agreement for Services**

The selected Proposer for the provision of the Services will be required to execute an Agreement with LAVTA describing the Scope of Services to be performed, compensation, insurance requirements and other pertinent provisions. This Agreement must follow the Sample Agreement. **All Proposers are directed to review all of the terms and conditions set forth in the Sample Agreement, particularly the indemnification and insurance requirements.**

Submittal of a proposal must be deemed acceptance of all of the terms set forth in this RFP and the Sample Agreement unless the Proposer(s) includes with its proposal, in writing, any modifications requested to the RFP and/or Sample Agreement as set forth on the Exception Form, Exhibit 2. All requests for exceptions must be in writing, separately identified, and delineated for each task, or other item, and must be submitted on Exhibit 2. LAVTA reserves the right to request further clarification of any requested exception during negotiations and to exclude unacceptable exception(s). No exceptions may be requested after the deadline for the submittal of proposals.

**B. Audit Requirements**

The Consultant's proposed rates and costs will be subject to audit in accordance with Federal Cost Principals (Title 48, Code of Federal Regulations, Part 31) and/or Generally Accepted Accounting Principles (GAAP). Consultant(s) must cooperate with LAVTA and its audit firm. After any audit recommendations are received by LAVTA, the proposed rates and costs must be adjusted by Consultant and approved by LAVTA, to conform to the audit recommendations. Consultant agrees that individual items of cost may be incorporated into the Consultant's Agreement at LAVTA's sole discretion to conform to the audit recommendations. Refusal by



Consultant to incorporate audit recommendations will be considered a breach of the Agreement and may, at LAVTA's sole discretion, be considered cause for termination of the Agreement.

Proposer(s) may be required to submit recent audit reports (not older than 18 months) of any subconsultant's direct and indirect rates prior to contract award, and must state whether rates are consistent with Federal Cost Principals (Title 48, Code of Federal Regulations, Part 31). Each audit must have been conducted by the Federal Government, a Certified Public Accountant, or Independent Auditor. Proposer(s) must identify the audit source, contact name, phone number, and furnish copies of findings. If a Proposer(s) provides fully-burdened rates for approval, for themselves or for a subconsultant, the rates must be accompanied by proof where another public agency has recently approved the quoted rate, or some other justification acceptable to LAVTA.

**C. Insurance and Indemnification Requirements**

Proposers are instructed to carefully review the insurance and indemnification provisions set forth in **Appendix C**, and provide evidence of Proposer's acceptance and ability to comply.

Proposers shall submit evidence of ability to provide insurance and meet the stated insurance requirements. Said evidence shall take the form of a current Certificate of Liability Insurance (COLI) or a letter from Proposer's insurance agent or broker certifying that such insurance requirements can be obtained.

If the certificate does not cover the requirements as specified in **Appendix C**, verification of availability of required insurance must otherwise be provided.

**D. Joint Venture Agreement, if applicable**

If the Proposer is a joint venture, an executed copy of the Joint Venture contract shall be included with the proposal. The specific areas of responsibility (including administrative, technical, and financial) for each member of the Joint Venture shall be outlined.

**6. PROPOSAL CONTENT CHECKLIST**

**Note: Proposers must provide an unredacted version of their proposal. If Proposers are claiming that any portion of their proposal is confidential/proprietary, they must also provide a redacted version of proposal along with a confidentiality index. Reference Section 4.O.**

- Proposal Cover Form**  
Include the completed and signed Proposal Cover Form, Exhibit 1, including acknowledgement of addenda, if any.
- Letter of Introduction, Exceptions to the Agreement and Joint Venture Agreement, if applicable**  
Reference Section 3.B. Any exceptions must be set forth on Exception Form, Exhibit 2. Reference Section 5.D., joint venture agreement, if applicable.
- Table of Contents**  
Reference Section 3.C.
- Approach to Providing Services**  
Outline services to be rendered under the Agreement. Discuss approach, methodology, team organization and management plan.

- On-Call Team Organization  
Reference Section 3.D.
  
- Identification of Subconsultants  
Reference Section 3.D.3.i. Proposers intending to use subconsultants must identify them on the Proposer's Designation of Subconsultants Form located in Exhibit 3, and include these forms with its proposal. Use of any and all subconsultants must be approved in writing by LAVTA's authorized representative.
  
- Quality Control Plan  
  
Reference Section 3.D.3.ii.
  
  
- Company Qualifications, Experience and References**  
Reference Section 3.E. Proposers must use the Reference Form located in Exhibit 4, for this purpose.
  
- Qualifications and Experience of Key Personnel**  
Reference Section 3.F.
  
- Financial Statements and Insurance Requirements**  
Reference Section 3.G. for financial statement submittal and Insurance Requirements, Appendix C. Proposers must submit evidence of ability to provide insurance and meet the insurance requirements stated in the RFP. Said evidence must take the form of a current Certificate of Liability Insurance (COLI) or a letter from Proposer's insurance agent or broker certifying that such insurance requirements can be obtained.  
  
If the certificate does not cover the requirements as specified in Insurance Requirements, Appendix C, verification of availability of required insurance must otherwise be provided.
  
- Cost Proposal**  
Reference Section 3.H. All pricing, cost and rate information must be uploaded using the Cost Proposal Form, Exhibit 5.
  
- Levine Act**  
[for board approved contracts only]  
Reference Section 3.I. and submit the California Levine Act Statement, Exhibit 6.
  
- Conflicts of Interest**  
Reference Section **Error! Reference source not found.** Proposer must provide a list in its proposal of its current contracts that involve work with LAVTA, including a brief description of its job under the contract. Proposer must identify any potential conflicts that may compromise its delivery of unbiased work product.
  
- Confidentiality, if applicable**  
Reference Section 4.O.
  
- Other Required Forms and Information**  
Submit all other required forms provided in this solicitation.

**7. SUBMISSION INSTRUCTIONS**

To expedite the release of proposal documents to reviewers, you are instructed to provide the required documents in Adobe PDF format (unless otherwise noted) as follows.

1. Proposal (unredacted)  
(RFP, Section 3. A through F, Proposal Content)  
Exhibit 1: Proposal Cover Form Exhibit 2: Exception Form  
Exhibit 4: Reference Form Exhibit 6: California Levine Act
2. Financial Statement, Income Statement and Balance Sheets for previous 3 years  
(RFP Section 3.G.)
3. Cost Proposal  
(RFP, Exhibit 5 and/or submit Proposer's Alternative Cost Proposal)
4. Insurance  
Certificate of Insurance or Letter from Insurance Broker  
(RFP, Section 5.C. and Appendix C)
5. Exhibits 3  
Exhibit 3: Designation of Subconsultants
6. Redacted Copy of Proposal (only required if requesting sections be treated as confidential)  
(See RFP, Section 4.O., Confidentiality)

**8. EXHIBITS**

Exhibit 1 – Proposal Cover Form  
Exhibit 2 – Exception Form  
Exhibit 3 – Designation of Subconsultants  
Exhibit 4 – Reference Form  
Exhibit 5 – Cost Proposal Form  
Exhibit 6 – California Levine Act

**EXHIBIT 1: PROPOSAL COVER FORM**

**PROPOSAL COVER FORM  
for  
LAVTA LEGAL SERVICES  
RFP # 2023-04**

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

**A. GENERAL INFORMATION**

DATE SUBMITTED: \_\_\_\_\_

NAME OF FIRM UNDER WHICH BUSINESS IS CONDUCTED:

\_\_\_\_\_

**B. PROPOSAL CONTACT PERSON INFORMATION**

NAME AND TITLE: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MAILING ADDRESS, IF DIFFERENT: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

OFFICE PHONE NUMBER: \_\_\_\_\_

CELL PHONE NUMBER: \_\_\_\_\_

**C. CONDITIONS:**

1. The Request for Proposals, required Forms, and Addenda, if any, are made a part of this proposal.
2. The undersigned acknowledges receipt of the following Addenda (e.g. 1, 2, 3, 4, etc.), if any:  
\_\_\_\_\_
3. The undersigned understands and agrees to be bound to the proposed Scope of Services and Cost Proposal for 180 days from the date of proposal submittal.
4. The undersigned is prepared to sign the Sample Agreement for Services 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. Exceptions, or modifications, if any, should be clearly identified and submitted on Exhibit 2.

**SIGNED:**

The undersigned certify that I/we submit this proposal and sign this Proposal Cover Form with full and proper authorization to do so and have read, understood, and will comply with all the terms and conditions set forth in the RFP documents. \*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**\*Note:**

If a sole owner, it shall be signed by the owner of the company.

If a corporation, it shall be signed by a Corporate Officer who has full and proper authorization to bind the corporation to the proposal.

If a joint venture, it shall be signed on behalf of each participating company by officers or other individuals who have the full and proper authorization to bind each company to the proposal.

If a partnership, it shall be signed under the partnership name by a partner of the firm and the name of each partner shall be provided.

If a limited liability company (LLC), it shall be signed by an officer or member who has the full and proper authorization to bind the LLC. The officer or member must provide evidence satisfactory to LAVTA indicating the individual's authority to bind the LLC, such as a certified copy of a resolution authorizing the individual to execute written contracts or a copy of the LLC operating agreement.

**EXHIBIT 2: EXCEPTION FORM**

Submittal of a proposal shall be deemed acceptance of all the terms set forth in this RFP, including the Sample Agreement for Services, unless the Proposer includes with its proposal, in writing, any exceptions or modifications requested by the Proposer.

COMPANY NAME: \_\_\_\_\_

EXCEPTIONS: \_\_\_\_ NO; \_\_\_\_ YES.

If YES, list below all exceptions to the solicitation documents and requirements, including exceptions to the Sample Agreement for Services and Insurance Requirements. Number each exception and attach additional copied pages of this form as necessary.

#	Document	Section	Exception/Issue	LAVTA's Response
1				
2				
3				
4				
5				

**EXHIBIT 3: DESIGNATION OF SUBCONSULTANTS**

Proposer's Name: \_\_\_\_\_ Is your firm a Disadvantaged Business Enterprise: Yes \_\_\_\_\_ No \_\_\_\_\_  
 Address: \_\_\_\_\_ Firm's Annual Gross Receipts: \_\_\_\_\_ Age of Firm: \_\_\_\_\_  
 Phone: \_\_\_\_\_ ( ) \_\_\_\_\_

**Instructions:** Proposer **MUST** provide information below for **ALL** subcontractors/subconsultants/suppliers ("sub-bidders") that provided proposer a bid, quote, or proposal for work, services or supplies associated with this contract. This information shall be provided for all sub-bidders regardless of tier for both DBEs and non-DBEs alike. Include all bid acceptance(s) AND rejection(s). Please state "None" if there are no sub-bids.

Subcontractor/Subconsultant/Supplier Firm Name/Address/Phone/Contact Person	DBE (Yes/No)	Please indicate system name, description of Work, Services, or Supplies.	Dollar Amount or Percentage of Work, Services, or Supplies	Bid/Quote Accepted? (Yes/No)
1				
2				
3				

Note: Do not indicate more than one "Yes" in the column "Bid/Quote Accepted" for alternative subcontractors for the same work. Use additional sheets if necessary.

**By submitting a proposal, the Consultant certifies that it will enter into a formal agreement with the subcontractor(s), subconsultant(s) and/or supplier(s) whose bid/quote was accepted conditioned upon execution of a contract with LAVTA. The Consultant certifies that any DBE listed whose quote was accepted will be performing a commercially useful function on the contract.**

**EXHIBIT 4: REFERENCE FORM**

Proposers shall list the company name and contact information as well as the status of contract(s) where the firm has either provided services as a prime contractor or as a subcontractor during the past five (5) years. A separate form must be provided for each contract the Proposer held/holds with the same company. **A minimum of three (3) and a maximum of five (5) different references must be provided** for whom similar products and/or services were provided. DO NOT USE THE LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY AS A REFERENCE.

If contract was terminated, Proposer shall list the reason for termination. Proposer also must identify and state the status of any litigation, claims or settlement agreements related to any of the identified contracts.

_____ Company	_____ Project Description
_____ Address	_____ Project / Contract Value
_____ City, State, Zip	_____ Award Date / End Date
_____ Contact Name	( ) _____ Telephone
_____ Contact Title	_____ Email

**Scope and Status of Contract:** \_\_\_\_\_

**Other:** \_\_\_\_\_

_____ Name	( ) _____ Telephone Number
_____ Title	_____ Email Address

**Note: Please complete this form for each reference provided**



**EXHIBIT 5: COST PROPOSAL FORM**

**Price Proposal Form  
Request for Proposal #2023-04**

The following 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

**Hourly Rate**  
(For Lead Attorney)

**Year 1 \$** \_\_\_\_\_  
October 1, 2023 through September 30, 2024

**Please attach listing of Year 1 hourly rates for other Partners and/or Associates proposed to assist the Lead Attorney (es)**

**Pricing for subsequent years:**

Successful Proposer(s) may request approval for labor rates to be adjusted for the new contract year. On an annual basis, no later than 60 days before the start of a succeeding Agreement year, the CONSULTANT may, upon written request, adjust prospectively its labor rates. Increases in future labor rates shall be limited, if requested, to the most recent Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco/Oakland/Hayward, CA area available to the AUTHORITY, or up to a maximum of 3.5 percent escalation, whichever is lower. The effective date of the CPI-U adjustment, if any, will commence either (1) the first day of the second and/or subsequent year(s) of the Agreement, or (2) the date of the CONSULTANT's request, whichever event is later. Upon written approval by the AUTHORITY, the negotiated changes shall remain in effect for the subsequent Agreement year. If the CONSULTANT does not submit a request at least 60 days before the start of the succeeding Agreement year, the CONSULTANT waives any CPI-U increase for that year.

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 a sole owner, it shall be signed by the owner of the company.  
If a corporation, it shall be signed by a Corporate Officer who has full and proper authorization to bind the corporation to the proposal.  
If a joint venture, it shall be signed on behalf of each participating company by officers or other individuals who have the full and proper authorization to bind each company to the proposal.  
If a partnership, it shall be signed under the partnership name by a partner of the firm and the name of each partner shall be provided. If a limited liability company (LLC), it shall be signed by an officer or member who has the full and proper authorization to bind the LLC. The officer or member must provide evidence satisfactory to LAVTA indicating the individual's authority to bind the LLC, such as a certified copy of a resolution authorizing the individual to execute written contracts or a copy of the LLC operating agreement..

**EXHIBIT 6: CALIFORNIA LEVINE ACT**

California Government Code Section 84308 (commonly referred to as the “Levine Act”) prohibits any LAVTA Board Member from participating in any action related to a contract, if he or she receives any political contributions totaling more than \$250 from the person or company awarded the contract for 12 months before or after the date a final decision concerning the contract has been made. The Levine Act also requires a member of LAVTA Board who has received such a contribution to disclose the contribution on the record of the proceeding.

Proposers also are required to disclose such contributions, if any; and are responsible for accessing the link below to review the names of Board members prior to answering the below questions:

LAVTA Board Members: <https://www.wheelsbus.com/about/board-of-directors-and-committees/>

Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any LAVTA Board Member in the 12 months preceding the date of the submission of your proposal(s) or the anticipated date of any Board action related to this contract?

YES  NO. If yes, please identify the Board Member(s):

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Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution of more than \$250 to any LAVTA Board Member in the 12 months following any Board action related to this contract?

YES  NO. If yes, please identify the Board Member(s):

Answering yes to either of the two questions above does not preclude LAVTA from awarding a contract to your firm or taking any subsequent action related to the contract. It does, however, preclude the identified Board Member(s) from participating in any actions related to this solicitation and resulting contract(s).

**9. APPENDICES**

APPENDIX A, Scope of Services  
APPENDIX B, Sample Agreement for Services  
APPENDIX C, Insurance Requirements



**Appendix A**

**SCOPE OF WORK**

## SCOPE OF WORK

### LEGAL SERVICES

#### 1. INTRODUCTION

##### 1.1. Request for Proposals

LAVTA is issuing this Request for Proposals (RFP) soliciting proposals from qualified attorneys and law firms to act as General Counsel for LAVTA and to provide legal services 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 250,000.

The LAVTA Board of Directors is the governing body which establishes transit policy. The Board is composed of seven (7) members, two representatives appointed from the city council of each member city of Dublin, Livermore and Pleasanton and one member representing the County of Alameda. The Board is organized into two standing committees, namely, (1) Finance and Administration, and (2) Projects and Services. Other committees are appointed for the duration of specific projects only.

The Executive Director oversees the operation of the transit system in accordance with the policy direction prescribed by the Board of Directors and is responsible for the overall administration of the fixed route and paratransit system. At present, the Executive Director is supported by a staff of fifteen (15) employees. Consultants are retained as needed to provide specialized planning, engineering, marketing, outreach and technical assistance as needed.

LAVTA contracts with a private company, MV Transportation, for the operation and maintenance of the fixed route services and with County Connection County Connection who subcontracts to Transdev for paratransit services. The services of the private companies were solicited through a Request for Proposals process.

LAVTA currently is a small operator per the FTA Title VI guidelines; however, given the changes in service levels and route schedules since the COVID-19 Pandemic, it is likely

that LAVTA will be moved into the large operator category and will need to update its Title VI Plan and begin to implement service equity and fare analyses.

LAVTA currently provides financial services support to the Tri-Valley San Joaquin Valley Regional Rail Authority (Valley Link).

LAVTA receives capital and operating assistance from a variety of sources, including the Federal Transit Administration (FTA) of the United States Department of Transportation, the State of California Transportation Development Act (TDA), State Transit Assistance (STA), Regional Measure 2 (RM2) funds, Measure BB funds, and a number of other fund sources.

Federal law requires grantees of funds from the Federal Transit Administration resulting from an opinion of their Chief Counsel to secure legal services competitively.

### Scope of Services

#### **A. General Duties**

The attorney for LAVTA serves as its Chief Legal Counsel. Counsel is hired by the Board and reports directly to the Board. By law, the attorney has full charge of the legal matters pertaining to LAVTA and serves as Legal Advisor to the Board of Directors, the Executive Director and other staff. The attorney is responsible for advising the Board of Directors with respect to their individual and collective responsibilities as members of the Board of Directors and for providing legal guidance to assure that LAVTA is in full compliance with all federal, state, regional and local laws and regulations and agreements. The attorney furnishes day-to-day advice to Authority management, attends Board of Directors (required) and Committee meetings (as needed), represents LAVTA before governmental agencies, and is responsible for handling all litigation matters (except personal injury claims) or other judicial, administrative or quasi-judicial proceedings.

The attorney must possess detailed knowledge of enabling legislation pertaining to LAVTA and all federal, state laws, regional and local regulations that govern public agencies in areas including the Ralph M. Brown Act, public records and conflicts of interest. The attorney is responsible for reviewing and/or drafting all contracts, agreements, memorandums of understanding, and procedural documents such as personnel and procurement manuals. The attorney is also expected to provide practical advice to assist the Board of Directors and management to achieve the policy goals and objectives of LAVTA.

#### **B. Specific Duties**

The provision of legal services by the attorney in areas including, but not limited to, the following

1. Contracts

- a) Procurement– Review competitive bidding documents and informal solicitation materials for equipment and non-professional services.
  - b) Professional services – Review Requests for Proposals (RFPs) for architects and engineers and other consultants, and draft professional services agreements.
  - c) Capital & Construction Projects
    - i. Review and approval of specifications
    - ii. Review and approval of bids received
    - iii. Review and approval of bid bonds
    - iv. Review and approval of Letters of Credit (LOC)
    - v. Issues relating to contract performance, payment claims and project acceptance/completion issues
    - vi. Warranty claims and any related litigation
    - vii. Review of construction contracts
  - d) Bid protest procedures
  - e) Compliance with federal and state procurement laws and regulations, including sole source analysis, Americans with Disabilities Act, Clean Air Act and Buy America requirements.
2. Real Property
- a) Land purchases including appraisals
  - b) Leases
  - c) License agreements
  - d) Easements
  - e) Eminent domain
3. Financing and funding
- a) Federal, state and regional government grants
  - b) Borrowing of funds
  - c) Establishment of rates and fares
  - d) Taxation
4. Administrative Law
- a) Federal agencies, e.g., Federal Transit Administration, Federal Highway Administration, United States Department of Labor, Corps of Engineers and United States Environmental Protection Agency.
  - b) State agencies, e.g., California Transportation Commission (CTC), California Department of Transportation (Caltrans), Public Utilities Commission (PUC), California Highway Patrol (CHP), Water Resources Control Board, California Air Resources Board (CARB), California Environmental Protection Agency.  
Regional agencies, e.g., the Metropolitan Transportation Commission (MTC), Alameda County Transportation Commission (ACTC) Bay Area Air Quality Management District, Regional Water Quality Board.
  - c) Local agencies, e.g., the Alameda County Board of Supervisors, City Councils of Dublin, Livermore and Pleasanton, Planning Departments and other transit agencies which provide service to and



from the Livermore/Amador Valley, including BART, Valley Link, County Connection, ACE etc.

5. Labor Law
  - a) Research and advice concerning all laws and regulations governing personnel related issues including Equal Employment, wage garnishments, employment rules and regulations, OSHA, drug and alcohol testing (including cannabis testing and law changes)
  - b) Federal Transit Act Section 13(c) requirements including negotiation of 13(c) agreements, arbitrations and litigations. This is a transit labor protection statute
  - c) Impact of proposed or existing autonomous vehicle regulations on labor law and practices
6. Civil Rights
  - a) Equal employment opportunity and affirmative action
  - b) Disadvantaged Business Enterprise (DBE) programs
  - c) Title VI and Environmental Justice
  - d) Americans with Disabilities Act (ADA)
  - e) Diversity, Equity and Inclusion
7. General Corporate
  - a) Joint ventures including Joint Powers agencies
  - b) Contracts for services
  - c) Public Private Partnerships
8. Legislation
  - a) Review and analysis of Federal and State legislation
9. Regulations
  - a) Review and analysis of Federal and State regulations including proposed Notices of Rule Making
10. Environmental Law
  - a) National Environmental Policy Act and State of California Environmental Quality Act compliance
  - b) Federal and State air quality, water quality, solid waste disposal, hazardous waste and toxic regulatory enforcement and permits requirements
11. Insurance
  - a) Public liability
  - b) Professional liability
12. Unique issues relating to public transit
  - a) Federal Transit Act Section 13 Labor Protection Issues
  - b) Title VI of the Civil Rights Act
  - c) Autonomous Vehicle Legislation and Regulation
  - d) Complementary paratransit services for disabled persons pursuant to the Americans with Disability Act (ADA)
  - e) Charter and school bus services

- f) Fare and service change procedures and service equity analysis requirements
  - g) Public Private Partnerships
13. Administrative
- a) Provide and/or update all procurement templates (IFB, RFP, etc.)
  - b) Review and update various administrative and operational policies (records retention, code of conduct, etc.)
  - c) Provide training (conflict of interest, sexual harassment, etc.) on a regular basis

### **1.3 Duration of the Contract**

The contract between LAVTA and Contractor shall be for a three (3) year period, i.e., starting October 1, 2023 and ending September 30, 2026. LAVTA reserves the right to extend the contract for five (5) one-year periods, i.e., October 1, 2026 through September 30, 2030, at the San Francisco-Oakland-Hayward, Ca CPI for the immediate prior calendar year for each extended year, using the “over the year change” for August each year.

### **1.4 Payment and Invoicing Instructions**

The Authority will review all invoices prior to payment, invoices should be submitted no later than 30 days after the end of a billing period. The Authority shall make payment for each invoice 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 Executive Director.

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 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**

A Professional Liability insurance policy covering errors and omissions and the resulting damages including, but not limited to, economic loss to the Livermore Amador Valley Transit Authority and having minimum limits of liability of \$1 million per claim or occurrence and \$1 million annual aggregate. The policy shall include coverage for all services and work performed under this Agreement.

### **5.) Property Insurance.**

Property insurance with Special Form coverage including theft, but excluding earthquake, with limits at least equal to the replacement of the property described below:

- a. This insurance shall include coverage for, but not be limited to:
- Consultant's own business personal property and equipment

to be used in the performance of this Agreement.

- Materials or property to be purchased and/or installed on behalf of the Livermore Amador Valley Transit Authority, if any.
- Builders risk for property in the course of construction.

b. Such insurance shall include the following endorsement as further detailed in the Endorsements section below:

- Waiver of Subrogation

## **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 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.



AGREEMENT BETWEEN  
THE LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY (AUTHORITY)  
AND  
\_\_\_\_\_ (CONSULTANT)

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SAMPLE

This AGREEMENT for LAVTA LEGAL SERVICES (Agreement) is entered into by and between the Livermore Amador Valley Transit Authority (AUTHORITY) located at 1362 Rutan Court, Suite 100, Livermore, CA 94551 and [REDACTED] CONSULTANT/CONTRACTOR), a [STATE] Corporation located at [REDACTED] [INSERT ADDRESS] (“the Parties”).

### 1. SCOPE OF SERVICES

This is an Agreement to provide [REDACTED]. 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 with special expertise in providing [REDACTED]; (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.

The scope of the CONSULTANT’s services will consist of the services set forth in the Request for Proposals dated [REDACTED], which is attached hereto and incorporated herein as Exhibit A, as supplemented by the CONSULTANT’s written proposal dated [REDACTED], attached hereto and incorporated herein as Exhibit B. [ADD ADDITIONAL EXHIBITS IF NECESSARY]

### 2. AGREEMENT DOCUMENTS [CUSTOMIZE AS NEEDED]

This Agreement consists of the following documents:

- (1) This Agreement including Attachment A [if cloud provisions] and Attachment [B] [negotiated] Insurance Requirements;
- (2) Exhibit A, Request for Proposals;
- (3) Work Directives/Task Orders, if applicable
- (4) Exhibit B, CONSULTANT’s Proposal including costs/labor rates.

In the event of conflict between or among the terms of the Agreement documents, the order of precedence will be the order of documents listed above, with the first-listed document having the highest precedence and the last-listed document having the lowest precedence.

### 3. TERM OF AGREEMENT

The term of this Agreement will be for a three-year term commencing upon [REDACTED] (Effective Date) and ending on [INSERT DATE]. The CONSULTANT will furnish the AUTHORITY with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the solicitation documents.

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 this Agreement. 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(s) granted thereto as specified herein are subject to the AUTHORITY's right to terminate the Agreement in accordance with Section 24 of this Agreement.

#### **4. CONSULTANT'S REPRESENTATIVE**

At all times during the term of this Agreement [REDACTED] will serve as the primary staff person of the 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 will possess similar qualifications and experience for this position.

#### **5. COMPENSATION**

The CONSULTANT agrees to perform all of the services included in Section 2. Compensation for satisfactory performance of the services included in Section 2 will be paid at the hourly labor rates plus mark-up/profit percentage ("mark-up") as stated in this Section and in Exhibit B.

The agreed-upon hourly labor rates plus the CONSULTANT's mark-up will include all direct labor, taxes, overhead, insurance, employee benefits, and other costs and expenses incurred by the CONSULTANT necessary for the performance of all the services called for under this Agreement.

The hourly labor rates and mark-up portion of the hourly labor rates will remain firm during the entire seven-year term of this Agreement. The AUTHORITY will pay the CONSULTANT in accordance with Section 6.

On an annual basis, no later than 60 days before the start of a succeeding Agreement year, the CONSULTANT may, upon written request, adjust prospectively its labor rates. Increases in future labor rates shall be limited, if requested, to the most recent Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco/Oakland/Hayward, CA area available to the AUTHORITY, or up to a maximum of 3.5 percent escalation, whichever is lower. The effective date of the CPI-U adjustment, if any, will commence either (1) the first day of the second and/or subsequent year(s) of the Agreement, or (2) the date of the CONSULTANT's request, whichever event is later. Upon written approval by the AUTHORITY, the negotiated changes shall remain in effect for the subsequent Agreement year. If the CONSULTANT does not submit a request at least 60 days before the start of the succeeding Agreement year, the CONSULTANT waives any CPI-U increase for that year.

##### **5.1. COST OF WORK**

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.

## 5.2. DIRECT LABOR

### 5.2.1. GENERAL

Direct Labor Rates shall be as set forth in Exhibit B to this Agreement and shall stay in effect for the first year of the Agreement. The hourly rates (direct labor costs) are subject to salary administration as set forth in Title 48 Code of Federal Regulations Part 31.

Charges by the CONSULTANT, and subconsultants, for an employee's 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.

For new personnel to be approved after contract award, the CONSULTANT, and subconsultants, shall submit a written request to the Procurement Officer and provide the person's name, job title, current actual rates, and resume, for the AUTHORITY's review and approval.

New personnel must be approved by the AUTHORITY prior to the new personnel commencing work under a project. Work performed by personnel not previously approved in writing by the AUTHORITY shall be at the CONSULTANT's own risk.

Increases in hourly rates may not exceed the percentage change of the Consumer Price Index (CPI-U) for the San Francisco/Oakland/Hayward, CA Area (Core Based Statistical Area (CBSA)) area, or **3.5%**, whichever is lower.

### 5.2.2. Straight Time

Straight time payroll is to be the equivalent annual salary/wage divided by 2080 hours per annum for employees approved to perform services under this Agreement.

### 5.2.3. Overtime

The AUTHORITY will reimburse the CONSULTANT, and subconsultants, 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 AUTHORITY has approved the overtime, in writing, prior to the incurring of said overtime. Overtime charges must reflect overhead rates reduced by non-applicable employee benefits.

## 5.3. CONSULTANT AND SUBCONSULTANTS MULTIPLIERS

### 5.3.1. General

The CONSULTANT, and subconsultants, 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 for the first year of the Agreement.

The agreed-upon multipliers shall be used for the CONSULTANT's and subconsultants' home office and AUTHORITY-Furnished Field Office, as appropriate to the assigned location of individuals working on the project. The multipliers will be applied to direct labor costs only as defined above. Initial CONSULTANT multipliers are as set forth in Exhibit B "Cost Proposal," dated [REDACTED].

### 5.3.2. Payroll Burden

The CONSULTANT and the AUTHORITY agree that the following will be considered as Payroll Burdens and as such will be paid to the CONSULTANT, and subconsultants, as compensation for said costs, as set forth below. "Payroll Burden" is defined as:

The cost of all a) employment taxes, b) CONSULTANT's, and subconsultant's, portion of social and retirement charges, and c) contributions imposed by law, or labor contract contributions (if applicable), or regulations, with respect to or measured by CONSULTANT's, and subconsultant's, payroll, including but not limited to, the CONSULTANT's, and subconsultant's, cost of owner-required insurance.

### 5.3.3. Employee Benefits

"Employee Benefits" for the CONSULTANT's and subconsultant's employees is defined as the cost of all 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 Director's drawings of dividends), employee stock ownership plan, savings plan, retirement plan, relocation benefits, and all other employee benefit plans.

### 5.3.4. Indirect Costs (Office Overhead)

The CONSULTANT, and subconsultants, shall be compensated through an agreed-upon multiplier for overhead, which includes those administrative, clerical, word processing, accounting, and other support staff utilized in performing services under this Agreement, which are not explicitly included in the Consultant's Proposal or approved by the AUTHORITY.

These rates will remain fixed for the initial year of the Agreement. These rates will be reviewed annually on the anniversary of the effective date of the Agreement for the CONSULTANT and its subconsultants and may be adjusted upon the AUTHORITY's approval.

5.3.4.1. The CONSULTANT's and subconsultant's Home Office Overhead rate shall apply to personnel assigned in the CONSULTANT's and subconsultant's Home Office in support of the performance of services under this Agreement. Home Office Indirect Cost Rates (overhead) included in the CONSULTANT's Proposal, including those of their subconsultants, must be substantiated by the most recent (within 12 months) audited reports available, which clearly show the calculations. All such reports shall comply with Federal Acquisition Regulations (FAR) reporting requirements. If audited reports are not available for subconsultants, the CONSULTANT will provide alternate information (i.e. other comparable public agency contract rates) to the AUTHORITY to review for acceptance. The AUTHORITY will have the final decision as to what is acceptable.

5.3.4.2. AUTHORITY-Furnished Field Office Overhead rate shall apply to the CONSULTANT's, and subconsultant's, personnel assigned to an AUTHORITY-Furnished Field Office on a full-time basis, for a period of at least 120 calendar days. As these rates cannot be pre-determined by audit, the AUTHORITY reserves the right to negotiate this rate for each firm.

#### 5.4. Maximum Fixed Fees (Profit)

##### 5.4.1. General

Maximum Fixed Fee percentages shall apply throughout the life of the Agreement. The CONSULTANT's fixed fee amount for each project may be negotiated on an individual project basis. Said fixed fee amount shall not be altered unless there is a significant alteration in the scope, complexity or character of the work to be performed under a project.

The maximum fees, as a percentage of fully burdened Direct Labor Cost, allowable by the AUTHORITY shall not **exceed:**

#### 5.5. OTHER DIRECT COSTS (ODCs)

##### 5.5.1. General

Other Direct Costs, including subconsultant's projects, shall be proposed at cost with a Zero Percent (0%) markup.

##### 5.5.2. Allowable ODCs

Examples of allowable ODCs include, but are not limited to: mileage, parking, tolls, mail costs, film, photo developing, facsimiles, printing/copying, plan reproduction, blueprint services, and subconsultants directly associated with the project. Expenditures for each allowable ODC in excess of \$500.00 per month, and not included above, shall require advance approval by the AUTHORITY. Supporting documentation is required for reimbursement of all ODCs.

##### 5.5.3. Subconsultants

With regard to subconsultants, the AUTHORITY will pay the cost of work as defined in Section 5.2 through Section 5.6.4 with Zero Percent (0%) markup. The CONSULTANT may be compensated for initial, or one-time, charges incurred in establishing a project or for pre-approved administration charges.

##### 5.5.4. Limitations on Direct Costs - The Following Are Limitations:

(1) Vehicles - If applicable and approved by the AUTHORITY, rental vehicles and associated support costs are limited to a total maximum of \$500 per month, per vehicle. The standard Internal Revenue Service mileage rates shall apply for use of a personal vehicle.

(2) Travel Expenses - All travel and relocation related plans must be approved in writing by the AUTHORITY 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) for Alameda County, California, 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 project site. Costs incurred for travel, subsistence, and relocation of personnel engaged in the performance of services under this Agreement, if approved in advance by AUTHORITY, will include the following:

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

- Travel, accommodations, and subsistence (directly related to the Scope of Services) for business trips to the project Site, to the AUTHORITY's consultants and suppliers, or to other locations approved by the AUTHORITY. Such travel may originate at the CONSULTANT's or subconsultant's home office or branch office, or at the CONSULTANT's dedicated field office, or at AUTHORITY's central or field offices.

#### 5.5.5. Unallowable ODCs

The following ODCs are not allowable unless they are authorized by prior written approval of the AUTHORITY's authorized 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.
- Computer hardware and software support, software licenses, or cellular phone usage.
- Safety equipment such as steel-toed boots, safety vests, and hard hats.
- Insurance
- Cellular phones
- 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 the CONSULTANT shall be credited to the AUTHORITY at the completion of the work performed under this Agreement.
- Shipping
- Drafting supplies
- Surveying supplies
- Models and renderings

All other ODCs that are not identified in 5.6.2 are considered unallowable ODCs and must be authorized by prior written approval of the AUTHORITY's authorized representative.

#### 5.6. Maximum Compensation Amount

A maximum not-to-exceed amount established for each project.



Further, it is expressly understood and agreed that in no event shall the CONSULTANT be compensated in an amount greater than the amount specified in any individual project for the services performed under such project without issuance of a written amendment to such project by the AUTHORITY's Procurement Officer.

If at any time, the 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 project, the CONSULTANT shall notify the AUTHORITY immediately in writing to that effect, indicating the estimated additional amount necessary to complete the services in the project. Any cost incurred by the CONSULTANT in excess of the not-to-exceed amount established for the project shall be at the CONSULTANT's own risk.

#### 5.7. Flow Down

The CONSULTANT shall include the requirements regarding audits, compensation and reimbursement for costs and fees in its subconsultant's agreements, provided such subconsultants have been approved by the AUTHORITY.

### 6. MANNER OF PAYMENT

The CONSULTANT must submit monthly invoices/billing statements detailing the services performed during the billing period. Each invoice/billing statement must provide a description of the work performed during the invoice period, the contract number [insert contract #], Purchase order #, and the AUTHORITY's Executive Director's name. The AUTHORITY will endeavor to pay approved invoices/billing statements within 30 calendar days of their receipt. The AUTHORITY reserves the right to withhold payment to the CONSULTANT if the AUTHORITY determines that the quantity or quality of the work performed is unacceptable. The AUTHORITY will provide written notice to the CONSULTANT within 10 calendar days of the AUTHORITY's decision not to pay and the reasons for non-payment. If the CONSULTANT disagrees with the AUTHORITY's decision not to pay and the reasons for non-payment, it must provide written notice detailing the reasons why it disputes the AUTHORITY's decision to the AUTHORITY within 30 calendar days of the AUTHORITY's notice. If the CONSULTANT does not provide written notice in accordance with this section, it waives all rights to challenge the AUTHORITY's decision. Final payment will be withheld until the CONSULTANT performs all required Agreement expiration or termination obligations.

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

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

The CONSULTANT represents that the CONSULTANT's taxpayer identification number (TIN) is [redacted] as evidenced by a completed Federal Form W-9.

The AUTHORITY will endeavor to pay approved invoices/billing statements within thirty (30) calendar days of receipt. The AUTHORITY reserves the right to withhold

payment to the CONSULTANT if the AUTHORITY determines that the quantity or quality of the work performed is unacceptable. The AUTHORITY will provide written notice to the CONSULTANT within ten (10) business days of the AUTHORITY's decision not to pay and the reasons for non-payment.

When the 90-day Warranty Period terminates, the CONSULTANT may begin invoicing the AUTHORITY for hosting and maintenance costs (Implementation Phase) as described in Exhibits A and B.

During the Implementation Phase, on the last day of each month, the CONSULTANT will submit an invoice to the AUTHORITY for the Total Monthly Recurrent Cost incurred in the preceding month with any applicable Uptime Credits deducted from the total. The AUTHORITY will within ten (10) business days notify the CONSULTANT whether it approves the entire invoiced amount or whether it intends on paying a lesser amount due to the failure of the Software to meet the reliability and Uptime standards set forth in the Section 12 below. The AUTHORITY will endeavor to pay approved invoices within thirty calendar days of receipt.

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

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

The CONSULTANT represents that the CONSULTANT's taxpayer identification number (TIN) is [REDACTED] as evidenced by a completed Federal Form W-9.

The AUTHORITY will endeavor to pay approved invoices/billing statements within thirty (30) calendar days of receipt. The AUTHORITY reserves the right to withhold payment to the CONSULTANT if the AUTHORITY determines that the quantity or quality of the work performed is unacceptable. The AUTHORITY will provide written notice to the CONSULTANT within ten (10) business days of the AUTHORITY's decision not to pay and the reasons for non-payment.

When the 90-day Warranty Period terminates, the CONSULTANT may begin invoicing the AUTHORITY for hosting and maintenance costs (Implementation Phase) as described in Exhibits A and B.

During the Implementation Phase, the AUTHORITY grants the CONSULTANT authority to directly deposit funds to and debit chargeback fees and refunds from an AUTHORITY Designated Bank Account (Designated Account) for payment processing services related to the Agreement. After the CONSULTANT receives confirmation that a transaction has successfully settled, the CONSULTANT will disburse the funds received from customer transactions to the AUTHORITY's Designated Account based on the following schedule: (a) Visa/MasterCard/Discover/Diners/JCB: two (2) business days after transaction has settled and (b) American Express: two to five (2 to 5) business days after transaction has settled. Funds are disbursed every weekday, excluding bank holidays, in which case they are sent the next business day. The CONSULTANT will use commercially reasonable efforts to ensure

transaction settlements are processed within five business days. Prior to depositing the funds, the CONSULTANT will deduct the credit card processing fees relating to the deposited transactions that the CONSULTANT has paid on behalf of the AUTHORITY and will credit any Uptime Credits. This authority will remain in effect until the CONSULTANT receives written notice from the AUTHORITY revoking it in such manner as to afford the CONSULTANT a reasonable opportunity to act and to retain funds to cover all outstanding fees due to the CONSULTANT or until the Agreement terminates or expires. All changes to the identification of the Designated Account under this authorization must be made in writing to the CONSULTANT by the AUTHORITY.

On the last day of the month, the CONSULTANT must submit to the AUTHORITY a report stating the total amount of funds deposited in the AUTHORITY's Designated Account for each deposit period, as well as a detailed breakdown showing, for each transaction during the deposit period (a) the amount received from each customer transaction, (b) the amount of credit card processing fees charged to the AUTHORITY for each customer transaction, (c) the net amount of each customer transaction deposited to the AUTHORITY's Designated Account, and (d) the Uptime Credits for the period.

Invoices and reports shall be made in writing and delivered or mailed to the AUTHORITY as follows:

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

The CONSULTANT represents that the CONSULTANT's taxpayer identification number (TIN) is [REDACTED] as evidenced by a completed Federal Form W-9

## **7. NOTICES**

Except for invoices submitted pursuant to Section 6, all notices or other communications relating to the day-to-day activities of the provided services will be exchanged between the AUTHORITY's [REDACTED] or designee, and the CONSULTANT's [REDACTED].

Notices informing the CONSULTANT of the AUTHORITY's decision to exercise Agreement options (that were exercisable in the AUTHORITY's sole discretion) will be exchanged between the AUTHORITY's [REDACTED] or designee, and the CONSULTANT's [REDACTED] via electronic mail to: [REDACTED].

All other notices and communications deemed by either party to be necessary or desirable to be given to the other party will be in writing and may be given by personal delivery to a representative of the Parties, by mailing the same postage prepaid, or by email, addressed as follows:

If to the AUTHORITY: Executive Director  
Livermore Amador Valley Transit Authority  
1362 Rutan Court, Suite 100  
Livermore, CA 94551

Email: [REDACTED]

If to the CONSULTANT: [REDACTED]  
Attn: [REDACTED]  
[REDACTED]  
[REDACTED]  
Email: [REDACTED]

The address to which mailings may be made may be changed from time to time by notice mailed or emailed as described above. Any notice given by mail will be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

**8. OWNERSHIP OF WORK**

All reports, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared for the services to be performed by the CONSULTANT will be and are the property of the AUTHORITY. The AUTHORITY will be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of the CONSULTANT or in the hands of any subconsultant upon completion or termination of the work will be immediately delivered to the AUTHORITY. If any materials are lost, damaged, or destroyed before final delivery to the AUTHORITY, the CONSULTANT will replace them at its own expense and the CONSULTANT assumes all risks of loss, damage, or destruction of or to such materials. The CONSULTANT may retain a copy of all material produced under this Agreement for its use in its general business activities.

Any and all rights, title, and interest (including without limitation copyright and any other intellectual-property or proprietary right) to materials prepared under this Agreement are hereby assigned to the AUTHORITY. The CONSULTANT agrees to execute any additional documents that may be necessary to evidence such assignment.

The CONSULTANT represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual property or proprietary right of any third party.

**9. CONFIDENTIALITY**

Any AUTHORITY materials that the CONSULTANT has access or materials prepared by the CONSULTANT during the course of this Agreement (“confidential information”) will be held in confidence by the CONSULTANT, which will 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 set forth in Section 1 of this Agreement.

The CONSULTANT, its employees, subcontractors, subconsultants and agents, will not release any reports, information, or other materials prepared in connection with this Agreement, whether deemed confidential or not, without the approval of the AUTHORITY’s Executive Director or designee.

## **10. USE OF SUBCONSULTANTS**

The CONSULTANT must not subcontract any services to be performed by it under this Agreement without the prior written approval of the AUTHORITY, except for service firms engaged in drawing, reprographics, typing, and printing.

Any subcontractors/subconsultants must be engaged under written contract with the CONSULTANT with provisions allowing the CONSULTANT to comply with all requirements of this Agreement, including without limitation the "Ownership of Work" provisions in Section 8. The CONSULTANT will be solely responsible for reimbursing any subcontractors/subconsultants and the AUTHORITY will have no obligation to them.

## **11. CHANGES**

The 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 or decrease in the budgeted cost of or the time required for performance of the agreed-upon work, an equitable adjustment as mutually agreed will be made in the limit on compensation as set forth in Section 5 or in the time of required performance as set forth in Section 3, or both. In the event that the CONSULTANT encounters any unanticipated conditions or contingencies that may affect the scope of work or services and result in an adjustment in the amount of compensation specified herein, or identifies any AUTHORITY conduct (including actions, inaction, and written or oral communications other than a formal contract modification) that the CONSULTANT regards as a change to the contract terms and conditions, the CONSULTANT will so advise the AUTHORITY immediately upon notice of such condition or contingency. The written notice will explain the circumstances giving rise to the unforeseen condition or contingency and will set forth the proposed adjustment in compensation. This notice will be given to the AUTHORITY prior to the time that the CONSULTANT performs work or services related to the proposed adjustment in compensation. The pertinent changes will be expressed in a written supplement to this Agreement issued by the Contracts and Procurement Department prior to implementation of such changes. Failure to provide written notice and receive AUTHORITY approval for extra work prior to performing extra work may, at the AUTHORITY's sole discretion, result in non-payment of the invoices reflecting such work.

## **12. RESPONSIBILITY: INDEMNIFICATION**

The CONSULTANT will indemnify, keep and save harmless the AUTHORITY and its directors, officers, agents and employees against any and all suits, claims or actions arising out of any of the following:

**A.** Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the CONSULTANT caused by a negligent act or omission or wilful misconduct of the CONSULTANT or its employees, subcontractors, subconsultants or agents; and

**B.** Any allegation that materials or services provided by the CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

The CONSULTANT further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses of defense as they are

incurred. If any judgment is rendered against the AUTHORITY or any of the other individuals enumerated above in any such action, the CONSULTANT will, at its expense, satisfy and discharge the same. This indemnification will survive termination or expiration of the Agreement.

**13. INSURANCE**

Refer to Appendix B, appended hereto, for the Insurance Requirements.

**14. CONSULTANT'S STATUS**

Neither the CONSULTANT nor any party contracting with the CONSULTANT will be deemed to be an agent or employee of the AUTHORITY. The CONSULTANT is and will be an independent consultant and the legal relationship of any person performing services for the CONSULTANT will be one solely between that person and the CONSULTANT.

**15. ASSIGNMENT**

The CONSULTANT must not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the AUTHORITY.

**16. LITIGATION SUPPORT**

The CONSULTANT must be willing to provide litigation support related to the performance of this Agreement, including serving as an expert witness if required by the AUTHORITY. In the event that litigation relating to the performance of this Agreement arises, the CONSULTANT will ensure that at least one individual has the appropriate expertise to act as an expert witness and will make that individual or individuals available to consult on issues related to litigation. The CONSULTANT may additionally be required to form expert opinions, draft expert witness reports, and provide expert witness testimony for depositions and other legal proceedings, including mediation, arbitration, and trials.

**17. AUTHORITY WARRANTIES**

The AUTHORITY makes no warranties, representations, or agreements, either express or implied, beyond such as are explicitly stated in this Agreement.

**18. AUTHORITY REPRESENTATIVE**

Except when approval or other action is required to be given or taken by the Board of Directors of the AUTHORITY, the AUTHORITY's Executive Director, or such person or persons the Executive Director may designate in writing from time to time, will represent and act for the AUTHORITY.

**19. WARRANTY OF SERVICES**

**A.** The CONSULTANT warrants that its services will be performed in accordance with the standards of practices of comparable [REDACTED] firms at the time the services are rendered. In addition, the CONSULTANT will provide such specific warranties as agreed upon by the Parties.

**B.** In the event that any services provided by the CONSULTANT hereunder are deficient because of the CONSULTANT's or subconsultant's failure to perform said services in accordance with the warranty standards set forth above, the AUTHORITY will report such deficiencies in writing to the CONSULTANT within a reasonable time. The AUTHORITY thereafter will have:

**i.** The right to have the CONSULTANT re-perform such services at the CONSULTANT's expense; or

**ii.** The right to have such services done by others and the costs thereof charged to and collected from the CONSULTANT if, within 30 days after written notice to the CONSULTANT requiring such re-performance, the CONSULTANT fails to give satisfactory evidence to the AUTHORITY that it has undertaken said re-performance; or

**iii.** The right to terminate the Agreement for default.

**C.** The CONSULTANT will be responsible for all errors and omissions and is expected to pay for all work as a result of errors and omissions.

## **20. CLAIMS OR DISPUTES**

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

The CONSULTANT will not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the AUTHORITY, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given the AUTHORITY due written notice of a potential claim. The potential claim will 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 AUTHORITY, such notice will be given to the AUTHORITY 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 will 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 will continue to work during the dispute resolution process in a diligent and timely manner as directed by the AUTHORITY and will be governed by all applicable provisions of the Agreement. The CONSULTANT will maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached that resolves the CONSULTANT claim, the Parties will execute an Agreement modification to document the resolution of the claim. If the Parties cannot reach an agreement with respect to the CONSULTANT claim, they may choose to pursue a dispute resolution process or termination of the Agreement.

## **21. REMEDIES**

In the event the CONSULTANT fails to comply with the requirements of this Agreement in any way, the AUTHORITY reserves the right to implement administrative remedies which may include, but are not limited to, withholding of progress payments and contract retentions, and termination of the Agreement in whole or in part.

## **22. TEMPORARY SUSPENSION OF WORK**

The AUTHORITY, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as the AUTHORITY may deem necessary. The suspension may be due to the failure on the part of the CONSULTANT to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of the CONSULTANT. The CONSULTANT will comply immediately with the written order of the AUTHORITY to suspend the work wholly or in part. The suspended work will be resumed when the CONSULTANT is provided with written direction from the AUTHORITY to resume the work.

If the suspension is due to the CONSULTANT's failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of the CONSULTANT, all costs will be at CONSULTANT's expense and no schedule extensions will be provided by the AUTHORITY.

In the event of a suspension of the work, the CONSULTANT will not be relieved of the CONSULTANT's responsibilities under this Agreement, except the obligations to perform the work that the AUTHORITY has specifically directed the CONSULTANT to suspend under this section.

If the suspension is not the responsibility of the CONSULTANT, suspension of all or any portion of the work under this Section may entitle the CONSULTANT to compensation and/or schedule extensions subject to the Agreement requirements.

## **23. TERMINATION**

**A. Termination for Convenience.** The AUTHORITY may terminate this Agreement for convenience at any time by giving sixty days written notice to the CONSULTANT. Upon receipt of such notice, the CONSULTANT may not commit itself to any further expenditure of time or resources, except for costs reasonably necessary to effect the termination. If the AUTHORITY terminates the Agreement for convenience, the AUTHORITY agrees to pay the CONSULTANT, in accordance with the provisions of Sections 5 and 6, all sums actually due and owing from the AUTHORITY upon the effective date of termination, plus any costs reasonably necessary to effect the termination. The CONSULTANT is not entitled to any payments for lost profit on work to be performed after the date of termination, including, without limitation, work not yet performed, and milestones not yet achieved. All finished or unfinished documents and any material procured for or produced pursuant to this Agreement as of the date of termination are the property of the AUTHORITY upon the effective date of the termination for convenience. The CONSULTANT and its subcontractors must cooperate in good faith in any transition to other vendors or consultants as the AUTHORITY deems necessary. Failure to so cooperate is a breach of the Agreement and grounds for the termination for convenience to be treated as a termination for default.



**B. Termination for Default.** If the CONSULTANT fails to perform any of the provisions of this Agreement, the AUTHORITY may find the CONSULTANT to be in default. After delivery of a written notice of default, the AUTHORITY may terminate the Agreement for default if the CONSULTANT 1) does not cure such breach within 7 calendar days; or 2) if the nature of the breach is such that it will reasonably require more than 7 days to commence curing, as determined in the AUTHORITY's discretion, provide a plan to cure such breach which is acceptable to the AUTHORITY within 7 calendar days. If the CONSULTANT cures the default within the cure period but subsequently defaults again, the AUTHORITY may immediately terminate the Agreement without further notice or right to cure. In the event of the filing a petition for bankruptcy by or against the CONSULTANT or for appointment of a receiver for CONSULTANT's property, the AUTHORITY may terminate this Agreement immediately without the thirty-day cure period.

Upon receipt of a notice of termination for default, the CONSULTANT may not commit itself to any further expenditure of time or resources. The AUTHORITY agrees to remit final payment to the CONSULTANT in an amount to cover only those sums actually due and owing from the AUTHORITY for work performed in full accordance with the terms of the Agreement as of the effective date of termination. The AUTHORITY is not in any manner liable for the CONSULTANT's actual or projected lost profits had the CONSULTANT completed the services required by this Agreement, including, without limitation, services not yet performed, expenses not yet incurred, and milestones not yet achieved. All finished or unfinished documents, and any equipment or materials procured for or produced pursuant to this Agreement become the property of the AUTHORITY upon the effective date of the termination for default.

**C.** The rights and remedies of the AUTHORITY provided in this section are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

#### **24. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS**

All CONSULTANT and subconsultant costs incurred in the performance of this Agreement will be subject to audit. The CONSULTANT and its subcontractors/subconsultants will permit the AUTHORITY, the State Comptroller, and their authorized representatives, to inspect, examine, take excerpts from, transcribe, and copy the 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 will also provide such assistance as may be required in the course of such audit. The CONSULTANT will 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 the AUTHORITY's auditor or staff that reimbursement of any costs including profit or fee under this Agreement was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the CONSULTANT agrees to reimburse the AUTHORITY for those costs within sixty (60) days of written notification by the AUTHORITY.

**25. NON-DISCRIMINATION ASSURANCE - TITLE VI OF THE CIVIL RIGHTS ACT**

The CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONSULTANT shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Further, the CONSULTANT agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. The CONSULTANT shall obtain the same assurances from its joint venture partners, subcontractors, and subconsultants by including this assurance in all subcontracts entered into under this Agreement. Failure by the CONSULTANT 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 the AUTHORITY deems appropriate.

**26. EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

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 agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause. The CONSULTANT further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

The CONSULTANT will, in all solicitations or advancements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

The CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an

investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONSULTANT's legal duty to furnish information.

The CONSULTANT 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, to be provided by the AUTHORITY's Procurement Officer, advising the labor union or workers' representative of the CONSULTANT's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The CONSULTANT will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. The CONSULTANT will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the AUTHORITY and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the CONSULTANT's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The CONSULTANT will include the provisions of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

## **27. CONFLICT OF INTEREST**

**A. General.** Depending on the nature of the work performed, a CONSULTANT of the AUTHORITY may be subject to the same conflict of interest prohibitions established by California law that govern the AUTHORITY'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, the 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.

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

No person previously in the position of director, officer, employee or agent of the AUTHORITY during his or her tenure or for one (1) year after that tenure will have any interest, direct or indirect, in this Agreement or the proceeds under this Agreement, nor may any such person 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 the AUTHORITY, or any officer or employee of the AUTHORITY, for a period of one (1) year after leaving office or employment with the AUTHORITY 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.

**B. Organizational Conflicts of Interest.** The CONSULTANT will 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 the AUTHORITY; 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.

The CONSULTANT will 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 the CONSULTANT becomes aware of an organizational conflict of interest in connection with the work performed hereunder, the CONSULTANT immediately will provide the AUTHORITY with written notice of the facts and circumstances giving rise to this organizational conflict of interest. The 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, the AUTHORITY becomes aware of an organizational conflict of interest in connection with the CONSULTANT's performance of the work hereunder, the AUTHORITY will similarly notify the CONSULTANT.

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

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

The CONSULTANT will maintain written policies prohibiting organizational conflicts of interest and will ensure that its employees are fully familiar with these policies. The CONSULTANT will monitor and enforce these policies and will 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 the AUTHORITY in addressing organizational conflicts that arise out of work performed by the CONSULTANT, or to termination of this Agreement for breach.

**28. CALIFORNIA PUBLIC RECORD ACT REQUESTS (CPRA)**

The CONSULTANT consents to the release of this Agreement, the redacted version of its proposal, and the release of any portion of its proposal not included in its confidentiality index, and waives all claims against the AUTHORITY, its directors, officers, employees, and agents, for the disclosure of such information. If the CONSULTANT did not include a confidentiality index in its proposal, the AUTHORITY will have no obligation to withhold any information from disclosure and may release the information sought without liability to the AUTHORITY.

Upon receipt of a request pursuant to the CPRA seeking this Agreement, proposal material relating to this RFP, the AUTHORITY may provide the Agreement, redacted version of the proposal, or may withhold material designated in the confidentiality index that is exempt from disclosure. If the AUTHORITY determines that information in the confidentiality index is not exempt from disclosure, the AUTHORITY will give reasonable notice to the Proposer prior to releasing any material listed in the confidentiality index.

The CONSULTANT agrees to indemnify, defend, and hold harmless the AUTHORITY, its directors, officers, employees, and agents, from any 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 cost and expenses, including attorneys' fees, related to the withholding of the information included in the confidentiality index or in the redacted version of the proposal or in this Agreement. If CONSULTANT fails to accept a tender of a defense, the AUTHORITY reserves the right to resolve all claims at its sole discretion, without limiting any rights stated herein.

**29. ATTORNEYS' FEES**

If any legal proceeding should be instituted by either of the Parties to enforce the terms of this Agreement or to determine the rights of the Parties under this Agreement, the prevailing party in said proceeding will recover reasonable attorneys' fees, in addition to all court costs.

**30. WAIVER**

Any waiver of any breach or covenant of this Agreement must be in a writing executed by a duly authorized representative of the party waiving the breach. A waiver by any of the Parties of a breach or covenant of this Agreement will not be construed to be a waiver of any succeeding breach or any other covenant unless specifically and explicitly stated in such waiver.

**31. SEVERABILITY**

If any provision of this Agreement is deemed invalid or unenforceable, that provision will be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement, and in any event, the remaining provisions of this Agreement will remain in full force and effect.

**32. NO THIRD PARTY BENEFICIARIES**

This Agreement is not for the benefit of any person or entity other than the Parties.

**33. APPLICABLE LAW**

This Agreement, its interpretation, and all work performed under it will be governed by the laws of the State of California. The CONSULTANT must comply with all Federal, State, and Local Laws, rules, and regulations applicable to the Agreement and to the work to be done hereunder, including all rules and regulations of the AUTHORITY.

**34. RIGHTS AND REMEDIES OF THE AUTHORITY**

The rights and remedies of the AUTHORITY provided herein will not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.

**35. BINDING ON SUCCESSORS**

All of the terms, provisions, and conditions of this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors, assigns, and legal representatives.

**36. ENTIRE AGREEMENT; MODIFICATION**

This Agreement, including any attachments, constitutes the complete Agreement between the Parties and supersedes any prior written or oral communications. This Agreement may be modified or amended only by written instrument signed by both the CONSULTANT and the AUTHORITY. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the Effective Date.

**LIVERMORE AMADOR VALLEY TRANSIT  
AUTHORITY:**

**CONSULTANT: (See footnote below)\***

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Print: \_\_\_\_\_

Title: Executive Director

Title: \_\_\_\_\_

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

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

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Attorney for the AUTHORITY

\* Note: If Consultant is a Corporation, this Agreement must be executed by two officers of the corporation, consisting of one officer from each of the two separate categories:

- (1) the President, Vice President, or Chair of the Board; and
- (2) the Secretary, Assistant Secretary, Treasurer or Chief Financial Officer.

In the alternative, this Agreement may be executed by a single Officer or a person other than an Officer provided demonstrating that such individual is authorized to bind the Corporation (e.g. – a copy of a certified resolution from the Corporation's bylaws).

If the Consultant is a limited liability company (LLC), the Agreement must be executed by an officer or member who has the full and proper authorization to bind the LLC. The Officer or member must provide evidence satisfactory to the AUTHORITY indicating the individual's authority to bind the LLC, such as a certified copy of a resolution authorizing the individual to execute written contracts or a copy of the LLC operating agreement.

The insurance requirements specified in this section shall apply to Consultant and any subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms, or corporations that Consultant authorizes to work under this Agreement (hereinafter collectively referred to as "Agents"). Consultant 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, Consultant 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 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**

A Professional Liability insurance policy covering errors and omissions and the resulting damages including, but not limited to, economic loss to the Livermore Amador Valley Transit Authority and having minimum limits of liability of \$1 million per claim or occurrence and \$1 million annual aggregate. The policy shall include coverage for all services and work performed under this Agreement.

**5.) Property Insurance.**

Property insurance with Special Form coverage including theft, but excluding earthquake, with limits at least equal to the replacement of the property described below:

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

- Consultant's own business personal property and equipment to be used in the performance of this Agreement.
- Materials or property to be purchased and/or installed on behalf of the Livermore Amador Valley Transit Authority, if any.
- Builders risk for property in the course of construction.

b. Such insurance shall include the following endorsement as further detailed in the Endorsements section below:

- Waiver of Subrogation

**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.