

REQUEST FOR PROPOSALS

LAVTA ON-CALL CREATIVE, DESIGN, AND MEDIA STRATEGY SERVICES

#2024-02

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

| | |
|--|--|
| RFP Issued | January 31, 2024 |
| Pre-Proposal Conference (optional but highly recommended) | February 15, 2024, at 2:00 p.m. PST |
| Questions and RFCs Due | February 20, 2024, prior to 4:00 p.m. PST |
| Agency's Response to Questions/RFCs | February 23, 2024, by end of business |
| Proposals Due | March 1, 2024, prior to 2:00 p.m. PST |
| Interviews (if required) | March 12-13, 2024, if needed |
| Contract Award (tentative) | April 1, 2024 |
| Notice to Proceed (tentative) | April 8, 2024 |

Contact Info: David Mark
Director of Customer Experience
(925) 455-7555
procurements@lavta.org

TABLE OF CONTENTS

| | <u>Page</u> |
|--|--------------------|
| 1. INVITATION | 1 |
| 2. INTRODUCTION..... | 2 |
| A. Summary and Term | 2 |
| B. Background Information | 2 |
| C. Anticipated Compensation | 2 |
| 3. PROPOSAL CONTENT | 2 |
| A. Proposal Cover Form | 2 |
| B. Letter of Introduction | 3 |
| C. Table of Contents..... | 3 |
| D. Approach to Providing Services: On-Call Team Organization and Task Order Management Plan | 3 |
| E. Company Qualifications, Experience & References | 4 |
| F. Qualifications and Experience of Key Personnel | 5 |
| G. Financial Qualifications | 5 |
| H. Cost Proposal..... | 5 |
| I. Levine Act | 6 |
| J. Licenses and Certifications | 6 |
| K. Conflicts of Interest | 6 |
| L. System for Award Management (SAM) | 6 |
| 4. SOLICITATION PROCESS | 7 |
| A. Pre-Proposal Conference | 7 |
| B. Submission of Questions and Requests for Clarification..... | 7 |
| C. Addenda to RFP | 7 |
| D. Submission of Proposals | 8 |
| E. Cost of Proposal Development | 8 |
| F. Validity of Proposals..... | 8 |
| G. Withdrawal of Proposals | 8 |
| H. Evaluation of Proposals and Selection Process | 8 |
| I. Interviews | 10 |
| J. Revised Proposals, Interviews and Negotiations..... | 10 |
| K. Contract Award | 10 |
| L. Protest Procedures | 11 |
| M. Ex-Parte Communications | 11 |
| N. Confidentiality..... | 12 |
| O. Waiver | 13 |

P. LAVTA’s Rights 13

5. CONTRACTUAL REQUIREMENTS 13

 A. Agreement for Services 13

 B. Disadvantaged Business Enterprises (DBE) Policy..... 14

 C. Audit Requirements..... 14

 D. Federal Requirements 15

 E. Insurance and Indemnification Requirements 15

 F. Joint Venture Agreement, if applicable 15

 G. Ukraine/Russia Related Sanctions 15

6. PROPOSAL CONTENT CHECKLIST 15

7. SUBMISSION INSTRUCTIONS 17

8. EXHIBITS..... 17

 EXHIBIT 1: PROPOSAL COVER FORM..... 18

 EXHIBIT 2: REFERENCE FORM 20

 EXHIBIT 3: EXCEPTION FORM..... 21

 EXHIBIT 4: CALIFORNIA LEVINE ACT 22

 EXHIBIT 5: DESIGNATION OF SUBCONSULTANTS 23

 EXHIBIT 6: LOBBYING CERTIFICATION 24

 EXHIBIT 7: COST PROPOSAL FORM..... 28

 EXHIBIT 8: DISADVANTAGED BUSINESS ENTERPRISE (DBE) QUESTIONNAIRE 30

9. APPENDICES

 APPENDIX A – SCOPE OF WORK

 APPENDIX B – SAMPLE AGREEMENT

 APPENDIX C – INSURANCE REQUIREMENTS

 APPENDIX D – FEDERAL TRANSIT ADMINISTRATION CLAUSES

 APPENDIX E – TASK ORDER PROCESS

1. INVITATION

The Livermore Amador Valley Transit Authority (LAVTA) is seeking proposals from qualified firms (Proposers or Consultants) to provide on-call creative, design and media strategy services in planning, managing, and implementing marketing campaigns for a wide variety of programs and initiatives (Services).

LAVTA, subject to Board of Directors' approval, intends to award a two-year base term contract, with one additional one-year option term, for on-call Services to the successful Proposer. The successful Proposer(s) will execute an Agreement for Services. Please refer to Appendix B.

The Services will be provided on an as-needed basis. There is no guarantee of any amount of work that will be ordered or allocated, or the total compensation to be paid to any Consultant(s) under the contract(s).

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

Solicitation Timeline

| <u>Activity</u> | <u>Date</u> |
|-------------------------------------|--|
| RFP Issued | January 31, 2024 |
| Pre-Proposal Conference | February 12, 2024, at 2:00 p.m. PST |
| Questions and RFCs Due | February 20, 2024, prior to 4:00 p.m. PST |
| Agency's Response to Questions/RFCs | February 23, 2024, by end of business |
| Proposals Due | March 1, 2024, prior to 2:00 p.m. PST |
| Interviews (if required) | March 12-13, 2024, if needed |
| Contract Award (tentative) | April 1, 2024 |
| Notice to Proceed (tentative) | April 8, 2024 |

Proposals will be received via email to David Mark at procurements@lavta.org until 2:00 p.m. on March 1, 2024. 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.

LAVTA hereby notifies all Proposers that it is the policy of LAVTA to ensure non-discrimination on the basis of race, color, sex, or national origin in the award and administration of contracts that it awards. It is the intention of LAVTA to create a level playing field on which Disadvantaged Business Enterprises (DBEs) can compete fairly for contracts and subcontracts relating to LAVTA's construction, procurement and professional services activities. LAVTA's Disadvantaged Business Enterprise (DBE) Program described in the RFP documents will be applied to all projects funded in whole or in part with federal funds.

For questions regarding this RFP, please contact **David Mark** at procurements@lavta.org.

Tamara Edwards
Tamara Edwards
Director of Finance

January 31, 2024
Date

2. **INTRODUCTION**

A. **Summary and Term**

The Services to be provided to LAVTA consist of creative, design, and media strategy services in planning, managing, and implementing marketing campaigns for a wide variety of programs and initiatives. For detailed information regarding the required Services, please refer to Appendix A of this RFP.

If approved by LAVTA's Board of Directors, the successful Proposer will execute an on-call Agreement for a two (2) year base term with up to one (1), one-year option term. At LAVTA's sole discretion, Task Orders (TOs) will be issued as needed on a Cost-Plus-Fixed-Fee with a ceiling (CPFF) or Specified Rate of Compensation (SRC) basis.

Task Order (TO) Performance Period

TOs will be issued against the Agreement at any time, on an on-call basis during the Agreement's period of performance. Each TO will contain a period of performance and compensation terms specific to the TO.

Work to be performed per TOs issued under the Agreement must be completed within the Agreement's term. The term of a TO may not extend beyond the term of the underlying Agreement, unless the Agreement is extended pursuant to a properly executed amendment.

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.

C. **Anticipated Compensation**

The Services will be provided on an as needed basis and pursuant to Task Orders. There is no guarantee of any amount of work or level of effort that will be ordered or allocated, or total compensation to be paid to any Consultant under the Agreement.

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 limited to 60 or fewer letter-size pages (8.5 inch by 11 inch), single spaced, 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 Exception Form, Exhibit 3; 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: On-Call Team Organization and Task Order 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. Approach to Providing Services; Project Plan. Describe understanding of and rationale for, proposed on-call organization and intended approach to providing the work and tasks required in Appendix A. Proposer's project plan should be clear and comprehensive, and include mitigation strategy, governance policies, security measures, and risk mitigation. Proposer's proposed solutions should align with LAVTA's specific needs and goals, which are outlined in Appendix A.

Proposer should provide template documentation illustrating budgeting, scheduling, and promotion project management tools applicable to the work described in Appendix A.

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

i. Task Order Development and Procedures.

Describe in sufficient detail the process by which your firm will prepare a Task Order Proposal in response to a Task Order Proposal Request. See Appendix E.

ii. Task Order Management Plan and Procedures.

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 TO quality, strategy development, data analysis, subconsultant management, quality control of deliverables, schedule, budget compliance, staff management, and invoice preparation (Quality Control Plan). Additionally, each Proposer must address the following aspects of these procedures in its proposal:

(a) Use 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 5), 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 prior to the issuance of any associated TOs and prior to Consultant's commencement of any work under the associated TO.

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 marketing consulting services;
2. Be capable of providing the desired services as delineated in the Scope of Services, substantially with its own staff;
3. Have knowledge and understanding of applicable regulations and codes and be familiar with local conditions relating to the project scope and work;
4. Have appropriate professional licenses to perform the work;
5. Have experience in successfully managing work schedules and controlling costs.

Additionally, Proposers must provide a minimum of three (3) and a maximum of five (5) references of clients for whom, within the past five (5) years, the Proposer has provided similar services as those called for in this RFP. Include transportation agencies, if any. For each

submitted Reference Form, Exhibit 2, 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 whom the Consultant assigns to Task Orders issued under the Agreement.

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 subconsultants 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 who are anticipated to be available for TOs issued during the term of the Agreement.

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

Submit the Cost Proposal Form (Exhibit 7). Proposers shall include all reasonably foreseeable individual positions required in the performance of the Services, except those considered as overhead, and hourly rates for each individual position using the format contained in Exhibit 7. The rates shall include all costs for labor, materials, taxes, insurance, overhead, profits, and all

other costs necessary to perform the work. Proposers shall provide the same data for all proposed subconsultants, if any.

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 4.

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.

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.

L. System for Award Management (SAM)

The System for Award Management (SAM) is the official U.S. Government system that consolidated the capabilities of Central Contractor Registration / Federal Agency Registration (CCR/FedReg), Online Representations and Certifications Application (ORCA), and Excluded Parties List System (EPLS). Firms submitting proposals must be registered on the SAM website at <https://sam.gov/content/home> prior to award.

4. **SOLICITATION PROCESS**

A. **Pre-Proposal Conference**

A Pre-Proposal Conference will be held via Microsoft Teams. Staff will be available to answer Proposers' questions. Attendance at this meeting is optional but 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 via Microsoft Teams are as follows:

1. Register at the following link to obtain meeting information and link:
https://teams.microsoft.com/registration/6vWBwUspFkybTA1qCmH0YA,rR_VE6S5zke43Ce2kvuUSg,JeYJFKfnUkOc15JuAgQJhA.87l-Tb75vUSPHZ9CW1EBWg,w5zeMGEgPEG1tIzxDQq0kQ,y37B4BQHjEyPupMJ2SMCJQ?mode=read&tenantId=c181f5ea-294b-4c16-9b4c-0d6a0a61f460
2. Click "Join Now"
3. Enter **Meeting Number:** 288 295 263 028
4. Enter **Meeting Password:** h569xx
5. Enter the requested information if required
6. Click the "Join Now" button after entering the above information if required

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 David Mark at procurements@lavta.org. LAVTA's written response to Questions and/or Requests for Clarification will be posted on the LAVTA website (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 on a regular basis. 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 must be sent via email to David Mark at procurements@lavta.org by 2:00 p.m. on March 1, 2024. 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 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 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>Company Qualifications, Experience & References</p> <p>Demonstrate that the firm meets all the requirements set forth in Section 3.E, including:</p> <ul style="list-style-type: none"> A. Size of firm and years in business B. Experience in providing similar relevant services, and identifying how such services relate to this solicitation, C. References D. Experience in successfully managing work schedules and controlling costs | 25 |
| <p>Qualifications and Experience of Key Personnel</p> <p>Demonstrate that the firm's key personnel (including the proposed Project Manager) meet all the requirements set forth in Section 3.F, including:</p> <ul style="list-style-type: none"> A. The professional, technical, and managerial qualifications and experience successfully perform the Services described in Appendix A. B. Previous relevant experience which demonstrates the capability to successfully manage work <ul style="list-style-type: none"> 1) Years of experience 2) Extent of experience applicable to this work; and 3) Experience in key staff positions 4) Experience in developing innovative or advanced techniques | 25 |
| <p>Approach to Providing Services, Team Organization, and Task Order Management Plan:</p> <ul style="list-style-type: none"> A. Clarity and comprehensiveness of the proposed project plan, including migration strategy, governance policies, security measures, and risk mitigation. B. Alignment of the proposed solutions with LAVTA's specific needs and goals. C. Approach to the scope of services as noted in Appendix A, Scope of Services. D. Organization chart. E. Task Order development, procedures, and management plan. F. Quality Control Plan. | 35 |

| | |
|--|-------------------|
| <p>Costs and Value</p> <p>This portion of the proposal will be evaluated based on reasonableness of proposed costs. 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> | <p>15</p> |
| <p>Total =</p> | <p>100</p> |

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(s), 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 3. All requests for exceptions must be in writing, separately identified, and delineated for each task, or other item, and must be submitted on Exhibit 3. 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. Disadvantaged Business Enterprises (DBE) Policy

LAVTA is committed to and has adopted a Disadvantaged Business Enterprise (DBE) Program to ensure non-discrimination in the award and administration of all contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to construction, procurement, and professional services activities. To this end, LAVTA has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside of the DBE Program. In connection with the performance of this contract, the Consultant will cooperate in meeting these commitments and objectives. **LAVTA currently has a 1.33% overall goal for DBE utilization.**

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

“The Contractor/Consultant or subconsultant must not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor/Consultant must carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the Contractor/Consultant or subconsultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as LAVTA deems appropriate.”

LAVTA implements its DBE policy in accordance with DOT regulations, and no contract-specific DBE participation goal has been established for this contract. However, Proposers must cooperate with LAVTA in meeting its commitments and objectives with regard to ensuring nondiscrimination in the award and administration of contracts and must use their best efforts to ensure that barriers to DBE’s participation do not exist. To better help the Authority record and encourage DBE participation, all Proposers must complete, sign, and submit with their Proposal the DBE/Subcontractor forms included in the Proposal Forms.

By submitting a Proposal, a Bidder is deemed to have made the foregoing assurance and to be bound by its terms.

C. 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 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 Principles (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.

D. Federal Requirements

This RFP is subject to financial assistance from the U.S. Department of Transportation, Federal Transit Administration. Please refer to Appendix D.

E. Insurance and Indemnification Requirements

Proposers are instructed to carefully review the insurance and indemnification provisions set forth in **Appendices C and B**, 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.

F. 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.

G. Ukraine/Russia Related Sanctions

As a public agency with contracts with state and federal departments and agencies, LAVTA is required to avoid transactions with any persons or entities subject to economic sanctions. For the purpose of this section, "Economic Sanctions" are defined as those imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. By submitting a proposal, Consultant represents that it is not a target of Economic Sanctions. Should LAVTA determine Consultant is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for rejection of the Consultant's proposal any time prior to contract execution, or, if determined after contract execution, shall be grounds for termination by LAVTA.

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 3. Reference Section 5.F., 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 or Subcontractors
Reference Section 3.D.2. Proposers intending to use subconsultants must identify them on the Proposer's Designation of Subconsultants Form located in Exhibit 5, 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.
- Company Qualifications, Experience and References**
Reference Section 3.E. Proposers must use the Reference Form located in Exhibit 2, 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 7.
- Levine Act**
Reference Section 3.I. and submit the California Levine Act Statement, Exhibit 4.
- Conflicts of Interest**
Reference Section 3.K. 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.N.
- 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 transmit 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: Reference Form
Exhibit 3: Exception Form
Exhibit 4: California Levine Act
Exhibit 5: Designation of Subconsultants
Exhibit 6: Lobbying Certification
Exhibit 8: DBE Questionnaire
2. Financial Statement, Income Statement and Balance Sheets for previous 3 years
(RFP Section 3.G.)
3. Cost Proposal
(RFP, Section 3.H, Cost Proposal)
Exhibit 7 and/or submit Proposer's Alternative Cost Proposal
4. Insurance
Certificate of Insurance or Letter from Insurance Broker
(RFP, Section 5.E. and Appendix C)
5. 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 – Reference Form
- Exhibit 3 – Exception Form
- Exhibit 4 – California Levine Act
- Exhibit 5 – Designation of Subconsultants
- Exhibit 6 – Lobbying Certification for Contracts, Grants, Loans, and Cooperative Agreements
(Pursuant To 49 CFR Part 20)
- Exhibit 7 – Cost Proposal Form
- Exhibit 8 – DBE Questionnaire

9. APPENDICES

- APPENDIX A, Scope of Services
- APPENDIX B, Sample Agreement for Services
- APPENDIX C, Insurance Requirements
- APPENDIX D, Federal Transit Administration Clauses
- APPENDIX E, Task Order Process

EXHIBIT 1: PROPOSAL COVER FORM

**PROPOSAL COVER FORM
for
ON-CALL CREATIVE, DESIGN AND MEDIA STRATEGY SERVICES
RFP # 2024-02**

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: 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 3: 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 (i.e. RFP, Sample Agreement) | Section of Document | Exception/Issue/Suggested Revisions to Language | LAVTA's Response |
|---|---------------------------------------|---------------------|---|------------------|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |

EXHIBIT 4: 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://wheelsbus.com/about-lavta/>

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):

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).

EXHIBIT 5: 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** 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 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 6: LOBBYING CERTIFICATION FOR CONTRACTS GRANTS, LOANS AND COOPERATIVE AGREEMENTS (Pursuant to 49 CFR Part 20)

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

_____ Signature of Authorized Official

_____ Name and Title of Authorized Official

_____ Date

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB
13520348-0046

| | | |
|--|---|---|
| <p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p> | <p>2. Status of Federal Action:</p> <p><input type="checkbox"/> a. bid/offer/ application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award</p> | <p>3. Report Type:</p> <p><input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change</p> <p>For Material Change Only: Year _____ Quarter _____ Date of last report _____</p> |
| <p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known.</p> <p>Congressional District, if known:</p> | | <p>5. If Reporting Entity in No. 4 is Sub-awardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known:</p> |
| <p>6. Federal Department/Agency:</p> | <p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable: _____</p> | |
| <p>8. Federal Action Number, if known:</p> | <p>9. Award Amount, if known: \$ _____</p> | |
| <p>10.a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</p> | <p>10.b. Individuals Performing Services (including address if different from No.10a) (last name, first name, MI.):</p> <p><i>Attach Continuation Sheet if necessary.</i></p> | |
| <p>11. Amount of Payment (Check all that apply)</p> <p>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p> | <p>13. Type of Payment (Check all that apply)</p> <p><input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____</p> | |
| <p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including Officer(s), Employee(s), or Member(s) Contacted for Payment Indicated in Item 11.</p> <p><i>Attach continuation sheet if necessary.</i></p> | | |
| <p>15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> YES <input type="checkbox"/> NO</p> | | |
| <p>16. Information requested through this form is authorized by title 31 U.S.C. 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.</p> | <p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____</p> <p>Date: _____</p> | |
| <p>Federal Use Only:</p> | <p>Authorized for Local Reproduction Standard Form-LLL</p> | |

DISCLOSURE OF LOBBYING ACTIVITIES CONTINUATION SHEET SF-
LLL-A

Reporting Entity: _____

Page ___ of ___

Authorized for Local Reproduction
Standard Form - LLL-A

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

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

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

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

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

EXHIBIT 7: COST PROPOSAL FORM

Cost Proposal Form

Request for Proposal #2024-02

The following proposal prices include all costs for labor, materials, taxes, insurance, overhead, profits, and all other costs necessary to perform the work in accordance with the solicitation documents.

ON-CALL CREATIVE, DESIGN AND MEDIA STRATEGY SERVICES

CONSULTANT HOURLY RATES

| Key Staff (Name and/or Title) | Rate per Hour |
|---|---------------|
| 1. | |
| 2. | |
| 3. | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| Other (include proposed subconsultants): | |
| | |
| | |
| | |

Pricing for subsequent years:

Pursuant to the Agreement, on an annual basis, the successful Proposer may request approval from LAVTA to increase its labor rates for the succeeding contract year.

SIGNED:

The undersigned certify that we sign this Cost 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 8: DISADVANTAGED BUSINESS ENTERPRISE (DBE) QUESTIONNAIRE

1. **Is your firm a registered Disadvantaged Business Enterprise (DBE)?**

Yes _____ No _____

If the answer is “**Yes**”, please fill in your DBE Certification Number: _____

2. **Does your firm plan to subcontract any of the work or services or procure items required under this contract to any subcontractors, subconsultants, or suppliers?**

Yes _____ No _____

If the answer is “**No**”, you may stop here and you do not need to continue to Question 3. Please sign and submit this **page**.

3. **Describe briefly how your firm solicited small businesses, including DBEs, to participate on this contract.**

4. **Explain whether your firm considered selecting portions of the work that are economically feasible for small businesses, including DBEs, to perform. Identify the portion(s) of the work or service that was selected for subcontracting and explain why these portions of work were selected:**

5. **Explain the reasons for rejecting bids and accepting the bids from the selected subcontractor, subconsultant or supplier:**

6. **Describe any efforts your firm made to assist small businesses, including DBEs, in obtaining (1) adequate information about this solicitation, and (2) necessary equipment, supplies, bonding, or insurance, among others, to perform this contract:**

7. Describe any other steps your firm used to encourage or select small businesses, including DBEs:

The undersigned certifies that the above narrative is true and accurate and may be relied upon by the Agencies in evaluating the Bidder/Proposer's compliance with the bidding/proposal requirements.

Signature of Owner or Authorized Representative

Title

Date

APPENDIX A

SCOPE OF SERVICES

1. ON-CALL CREATIVE, DESIGN AND MEDIA STRATEGY SERVICES

1.1. INTRODUCTION

1.1.1. Request for Proposals

The Livermore Amador Valley Transit Authority (LAVTA) seeks the services of a qualified firm to provide on-call creative, design and media strategy services in planning, managing, and implementing marketing campaigns for a wide variety of programs and initiatives.

1.1.2. Background

LAVTA operates Wheels bus services, providing fixed route, school tripper, rapid, and commuter express services. It also provides paratransit services through Dial-A-Ride and para-taxi to ADA eligible riders. Wheels service area is the cities of Dublin, Livermore, Pleasanton and adjacent unincorporated areas of Alameda County.

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

1.1.3 Oversight

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. Two staff have dedicated marketing duties as defined by role. Consultants are retained as needed to provide specialized planning, marketing, and technical assistance.

2. Service Requirements

The applicable Scope of Services will be described in each Task Order, but the general Scope of Services includes, but is not limited to, the following:

2.1. Planning and Strategy Services

- Annual Planning: The contracted firm (Consultant) will plan annualized and ad-hoc campaigns supporting advertising, promotions, events, and education. The annual plan will be provided within 45 days of Notice to Proceed (NTP) and include proposed schedules, budgets, and reporting templates. This annual plan is a formalized document submitted to staff for review and to the Board of Directors for approval.

- **Campaign (Media) Planning:** The Consultant will prepare a project calendar and briefs that include campaign (media) strategy and tactics. The briefs must outline scheduling, budget and all media resources required.
- **Promotion and Event Planning:** The Consultant will prepare a project calendar and briefs that include promotion and event planning strategy and tactics. The briefs must outline scheduling, budget, and all promotional and event resources required.
- **Auditing and Reporting:** The Consultant will debrief and evaluate campaign and project outcomes to determine if initiatives successfully met objectives. Report deliverables will include comprehensive documentation defining outcomes against metrics set by objectives, budgets, execution against plans, samples of creative work and audits of medias placements.

2.1.1. Advertising and Media Services

The Consultant shall execute advertising campaigns and ad-hoc media buys to support LAVTA's marketing plans and objectives. The scope of work for this task includes but is not limited to:

- **Media Recommendations:** Consultant will analyze and recommend media channels and vendors which target optimal demographics with the highest return on investment based on project objectives.
- **Media Buying:** Consultant will participate in negotiations for and purchase media on behalf of LAVTA. Consultant cannot receive a commission for purchasing media on LAVTA's behalf. Consultant must include a billing breakdown on its monthly invoice(s) to LAVTA.
- **Scheduling and Insertions:** Consultant will submit approved advertising orders on behalf of LAVTA in accordance with LAVTA's campaign planning.
- **Creative Production:** Consultant will produce all media including but not limited to art and copywriting for print, radio, television, out of home, and digital assets.
- **Media Trafficking:** Consultant will coordinate with media vendors on technical specifications and delivery of final art after LAVTA's approval.
- **Auditing and Reporting:** Consultant will produce spot run reports, tear sheets, and other proof of placement for all media orders.

2.1.2. Brand Services

- **Brand and Style Guidelines:** Consultant will update and adhere to LAVTA's brand and style guidelines.
- **Media and Vendor Oversight:** Consultant will ensure brand and messaging adherence on all media channels and produced goods.
- **Brand Asset Library:** Consultant will maintain a current media library of all brand assets.

2.1.3. Collateral Services

- **Collateral Library:** Consultant will maintain a current media library of all collateral.

- Operational Updates: Consultant will update maps, schedules, and associated brochures and one sheet collateral for service changes.
- Promotional Support: Consultant will produce flyers, posters, and other promotional materials as required.
- Bus Cards: Consultant will produce compliance, stock, and promotional bus cards for bus interior advertising.

2.1.4. Graphics and Media Assets Services

- Graphics and Media Library: Consultant will maintain a current library of all graphics and media.
- Creation and Revisions: Consultant will create and revise graphics and media assets for:
 - Wayfinding
 - Website Content
 - Social Media Content
 - Bus Graphics
 - Photography
 - Other designs, illustrations, and stock material as needed.
- Ordering and Trafficking: Consultant will manage collateral production vendors.
- Proofing: Consultant will perform quality checks of all collateral prior to production.

2.1.5. Website and Digital Channels Services

Note: Service does not include website hosting or server/platform maintenance.

- UI / UX: Consultant will recommend and implement User Interface (UI) and User Experience (UX) best practices for transit planning and site mapping.
- Content Management: Consultant will coordinate and provide support on platform Content Management Systems (CMS) administration including a staging (test) environment.
- Functionality: Consultant will perform improvements and additions of functionalities and modules, both permanent and temporary, on the CMS and other ancillary platforms and programs including administration and Application Programming Interface (API) connectivity.
- Content Administration: Consultant will coordinate and provide support for digital channels for campaigns and promotions.

3. General Services

3.1 Creative Files

- Consultant shall produce artwork in high resolution electronic formats agreed to by LAVTA such as raw, mp4, Adobe Illustrator, or high-resolution jpeg for printing and video or other media applications. All work produced under the Agreement will become and remain the property of LAVTA. The Consultant must furnish

electronic files containing the artwork directly to LAVTA staff or to LAVTA cloud-based file sharing websites.

3.2 Reporting and Documentation:

- Consultant will provide and update a collaborative project management platform.
- Consultant will provide a monthly update of hours and costs by task order project.
- Consultant will coordinate bi-weekly status meetings or ad-hoc meetings as needed based on project requirements.
- Consultant will provide campaign and project debriefs for each initiative.
- Consultant will provide an end of year “look book” summarizing all campaigns and notable initiatives.

3.3 Security and Compliance:

- Consultant will adhere to industry best practices and security standards in all IT support activities.
- Consultant will comply with all relevant regulations and requirements related to data privacy and information security.

3.4 Basic Service, Office Hours, and Staffing

- Consultant will receive general guidance from LAVTA staff but will manage and control the day-to-day work directive activities and deliverables.
- Consultant must be able to provide services, as required, during normal business hours, which are 8:00 A.M.–5:00 P.M.
- Consultant must have sufficient staff available to maintain the required level of service when the Consultant's personnel are on vacation, out of state, or unavailable.

4. OPTION FOR ON-CALL MARKETING SURVEY AND RESEARCH SERVICES

At LAVTA's option, LAVTA may seek the Consultant's assistance with passenger surveys, which may include, but is not limited to:

4.1 Annual Fixed Route Passenger Survey

The Consultant will provide survey design, execution, analysis of and reporting on passenger satisfaction of fixed route services. The services may include:

- Project Management
- Outreach Strategy
- Survey and Infographic Design
- Online Survey Platform Development
- In-person Surveying
- Analysis and Summary of Findings

4.2 Annual Paratransit Passenger Survey

The Consultant will provide survey design, execution, analysis of and reporting on passenger satisfaction of paratransit services. The services may include:

- Project Management
- Outreach Strategy
- Survey and Infographic Design
- Online Survey Platform Development
- Execution
- Analysis and Summary of Findings

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

Table of Contents

| | |
|--|----|
| 1. SCOPE OF SERVICES | 3 |
| 2. AGREEMENT DOCUMENTS | 3 |
| 3. TERM OF AGREEMENT | 3 |
| 4. CONSULTANT’S REPRESENTATIVE | 4 |
| 5. COMPENSATION | 4 |
| 6. MANNER OF PAYMENT | 4 |
| 7. NOTICES | 5 |
| 8. OWNERSHIP OF WORK | 6 |
| 9. CONFIDENTIALITY | 6 |
| 10. USE OF SUBCONSULTANTS | 7 |
| 11. CHANGES | 7 |
| 12. RESPONSIBILITY: INDEMNIFICATION | 7 |
| 13. INSURANCE | 8 |
| 14. CONSULTANT’S STATUS | 8 |
| 15. ASSIGNMENT | 8 |
| 16. AUTHORITY WARRANTIES | 8 |
| 17. AUTHORITY REPRESENTATIVE | 8 |
| 18. WARRANTY OF SERVICES | 8 |
| 19. CLAIMS OR DISPUTES | 9 |
| 20. REMEDIES | 10 |
| 21. TEMPORARY SUSPENSION OF WORK | 10 |
| 22. TERMINATION | 10 |
| 23. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS | 11 |
| 24. NON-DISCRIMINATION ASSURANCE - TITLE VI OF THE CIVIL RIGHTS ACT .. | 12 |
| 25. EQUAL EMPLOYMENT OPPORTUNITY (EEO) | 12 |
| 26. DISADVANTAGED BUSINESS ENTERPRISES (DBE) POLICY | 13 |
| 27. CONFLICT OF INTEREST | 14 |

| | |
|---|----|
| 28. CALIFORNIA PUBLIC RECORD ACT REQUESTS (CPRA)..... | 16 |
| 29. ATTORNEYS' FEES..... | 16 |
| 30. WAIVER | 16 |
| 31. SEVERABILITY | 16 |
| 32. NO THIRD PARTY BENEFICIARIES | 17 |
| 33. APPLICABLE LAW | 17 |
| 34. RIGHTS AND REMEDIES OF THE AUTHORITY | 17 |
| 35. BINDING ON SUCCESSORS | 17 |
| 36. ENTIRE AGREEMENT; MODIFICATION..... | 17 |

SAMPLE

This AGREEMENT for ON-CALL CREATIVE, DESIGN AND MEDIA STRATEGY 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 _____] CONSULTANT), a _____[STATE] Corporation located at _____[INSERT ADDRESS] (“the Parties”).

1. SCOPE OF SERVICES

This is an Agreement to provide on-call creative, design and media strategy services. 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 creative, design and media strategy services; (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 _____, which is attached hereto and incorporated herein as Exhibit A, as supplemented by the CONSULTANT’s written proposal dated _____, attached hereto and incorporated herein as Exhibit B.

2. AGREEMENT DOCUMENTS

This Agreement consists of the following documents:

- (1) This Agreement, including Attachment A, Insurance Requirements, Attachment B, Federal Transit Administration Clauses, and Attachment C, Data Security and Data Privacy Requirements;
- (2) Exhibit A, Request for Proposals;
- (3) 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 two-year term commencing upon _____ (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 one one-year option term 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 22 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 the services to be specified in each Task Order. Compensation for satisfactory performance of services performed under Task Orders will be as stated in each Task Order and, unless specifically stated otherwise in the Task Order, will be in accordance with the hourly labor rates set forth in Exhibit B.

The agreed-upon hourly labor rates 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.

It is expressly understood and agreed that in no event will the CONSULTANT be compensated in an amount greater than the amount specified in any individual Task Order for the services performed under such Task Order. Any change order must be in writing and approved by the AUTHORITY's Project Manager and the Procurement Department.

There is no guaranteed amount of compensation to the CONSULTANT under this Agreement. However, the maximum compensation that the AUTHORITY has authorized to be expended for this Agreement will not exceed \$ [REDACTED] (write out the number). 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.

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 2024-02, Purchase order #, and the AUTHORITY's Project Manager'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.

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 Executive Director 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 Executive Director 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:

Attn:

Email:

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

A. General

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.

B. Data Security and Data Privacy Requirements. Refer to Attachment C, appended hereto, for additional data security and privacy requirements.

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;

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; and

C. Any disclosure, or alleged disclosure, of AUTHORITY PII, as defined in Attachment C.

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 Attachment A, 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. AUTHORITY WARRANTIES

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

17. 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.

18. WARRANTY OF SERVICES

A. The CONSULTANT warrants that its services will be performed in accordance with the standards of practices of comparable creative, design and media strategy services 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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, Federal Transit Administration (FTA), the U.S. DOT Office of Inspector General, and the Comptroller General of the United States, or any of 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.

24. 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.

25. 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.

26. DISADVANTAGED BUSINESS ENTERPRISES (DBE) POLICY

The AUTHORITY is committed to and has adopted a Disadvantaged Business Enterprise (DBE) Policy to ensure non-discrimination in the award and administration of all contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to construction, procurement, and professional services activities. To this end, the AUTHORITY has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside of the DBE Program. In connection with the performance of this Agreement, the CONSULTANT will cooperate in meeting these commitments and objectives.

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

“The CONSULTANT or subcontractor/subconsultant must not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT must carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the CONSULTANT or subcontractor/subconsultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the AUTHORITY deems appropriate.”

The AUTHORITY implements its DBE Policy in accordance with DOT regulations, and no contract-specific DBE participation goal has been established for this Agreement. However, CONSULTANT must cooperate with the AUTHORITY in meeting its commitments and objectives with regard to ensuring nondiscrimination in the award and administration of contracts and must use its best efforts to ensure that barriers to DBE's participation do not exist.

For DBE Program and requirements, please refer to Exhibit A and Appendix D, if applicable.

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 the FTA and 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.

ATTACHMENT A

INSURANCE REQUIREMENTS

[To be inserted/attached to final Agreement]

SAMPLE

ATTACHMENT B

FEDERAL TRANSIT ADMINISTRATION CLAUSES

[To be inserted/attached to final Agreement]

SAMPLE

ATTACHMENT C

DATA SECURITY AND DATA PRIVACY REQUIREMENTS

1. **DATA PRIVACY.** The CONSULTANT may have access to Personally Identifiable Information ("PII") in connection with the performance of the Agreement. PII is any information that identifies or describes a person or can be directly linked to a specific individual, including ridership and usage data. Examples of PII include, but are not limited to, name, address, phone or fax number, signature, date of birth, e-mail address, method of payment, payment card information, ridership and travel pattern data. AUTHORITY Personally Identifiable Information, or AUTHORITY PII, means any PII relating to the AUTHORITY's customers or employees.

The CONSULTANT must ensure and maintain the confidentiality, security, safety, and integrity of all AUTHORITY PII, including physical, electronic, and procedural safeguards designed to prevent unauthorized access or use and protect against known or anticipated threats to the security or integrity of such data. This includes, but is not limited to, the secure transport, transmission and storage of AUTHORITY PII used or acquired in the performance of this Agreement. Notwithstanding the generality of the foregoing requirements, the CONSULTANT will adhere to the following requirements concerning AUTHORITY PII:

A. The CONSULTANT may not, except as authorized or required by law, reveal or divulge to any person or entity any AUTHORITY PII that becomes known to it during the term of this Agreement. The CONSULTANT may not use or attempt to use any such information in any manner that may injure or cause loss, either directly or indirectly, to the AUTHORITY.

B. The CONSULTANT must maintain policies and programs that prohibit unauthorized disclosure of AUTHORITY PII and promote training and awareness of information security policies and practices. The CONSULTANT must comply, and must cause its employees, representatives, agents, and subcontractors to comply, with such commercially and operationally reasonable directions as the AUTHORITY may make to promote the safeguarding or confidentiality of AUTHORITY PII.

C. The CONSULTANT must conduct background checks for employees or subcontractors that have access to AUTHORITY PII or host AUTHORITY PII.

D. The CONSULTANT must limit access to computers and networks that host AUTHORITY PII, including without limitation through user credentials and strong passwords, data encryption both during transmission and at rest, firewall rules, and network-based intrusion detection software.

E. The CONSULTANT agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 et. seq.) and Civil Code Section 1798.81.5(b). In addition, the CONSULTANT warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, and the State of California relating to the handling and confidentiality of AUTHORITY PII, including the terms and conditions contained in this Section.

This Section will survive termination or expiration of this Agreement.

2. DATA SECURITY. The CONSULTANT must provide those administrative, physical, and technical safeguards for protection of the security, confidentiality, integrity, and availability of AUTHORITY PII pursuant to the minimum standards of care recommended by the California Attorney General in her February 2016 report (See <https://oag.ca.gov/breachreport2016>). In particular:

A. The CONSULTANT agrees to properly secure and maintain any computer, hardware and software applications, or electronic media that it will use in the performance of this Agreement. This includes ensuring all security patches, upgrades, and anti-virus updates are applied to secure AUTHORITY PII that may be used, transmitted, or stored on such software in the performance of this Agreement.

B. The CONSULTANT, its employees, agents, subcontractors, and consultants may not download or otherwise store any AUTHORITY PII onto any CONSULTANT computer, desktop, laptop, thumb drives, disks, or other portable memory device without such data being encrypted.

C. The CONSULTANT represents that its hosting environment is built upon a secure infrastructure, which undergoes examinations from an independent auditor in accordance with the minimum standards of care recommended by the California Attorney General in her February 2016 report (see above). For added security, the CONSULTANT will use multi-factor authentication when accessing the infrastructure. In addition to the independent audit, the AUTHORITY will have the right at any time, upon reasonable notice, to audit and inspect: (i) the CONSULTANT's facilities where the AUTHORITY PII is stored or maintained; (ii) any computerized software used to share, disseminate or otherwise exchange AUTHORITY PII; and (iii) the CONSULTANT's security practices and procedures, data protection, business continuity and recovery facilities, resources, plans and procedures related to software where the AUTHORITY PII is shared, disseminated or otherwise exchanged. The audit and inspection rights hereunder will be for the purpose of verifying the CONSULTANT's compliance with this Agreement, and all applicable laws.

D. The CONSULTANT must process and store all AUTHORITY PII in a single-tenant environment and at no time will AUTHORITY PII be commingled with data of independent third-party users of the CONSULTANT's services.

E. The CONSULTANT must have vulnerability management programs to identify and minimize threats and risks on any software used to store or transmit AUTHORITY PII.

F. The CONSULTANT represents that the CONSULTANT's management access to the hosting infrastructure is limited to authorized support staff. The security architecture has been designed to control appropriate logical access to the infrastructure to meet industry standards that meet or exceed the Trust Services Criteria and Principles for Security, Availability, Integrity, and Confidentiality established by the AICPA.

G. Notwithstanding anything to the contrary in this Agreement, the CONSULTANT agrees to retain AUTHORITY PII for no longer than three days after the completion date of this Agreement and the AUTHORITY's confirmation that the CONSULTANT may proceed with such deletion. At the conclusion of this retention period, the CONSULTANT agrees to use a U.S. Department of Defense ("DoD")-approved method of removal of

AUTHORITY PII from any files, with said service being included in the total cost of this Agreement. Discarded AUTHORITY PII will be unavailable and unrecoverable following the purge on any storage media including, but not limited to, magnetic disk, optical disk, and memory chips ("Storage Media"). The CONSULTANT agrees to destroy hard-copy documents containing AUTHORITY PII by means of a cross-cut shredding machine. The CONSULTANT also agrees to use DoD—approved methods, or an alternative AUTHORITY-approved method, to sanitize any Storage Media prior to discarding or when useful life has ended, whichever comes first. At the conclusion of the performance period of this Agreement, the CONSULTANT will submit a certification to the AUTHORITY's Project Manager that all electronic or hard-copy format AUTHORITY PII has been destroyed in accordance with the Agreement.

This Section will survive termination or expiration of this Agreement.

3. **NOTICE OF SECURITY BREACH.** The CONSULTANT must immediately notify the AUTHORITY when it discovers that there may have been a data security incident that has or may have resulted in compromise to AUTHORITY PII. For purposes of this Section, immediately is defined as within twenty-four hours of discovery. The CONSULTANT must immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of any suspected breach or security vulnerability—and must promptly alert the AUTHORITY of any such circumstances, including information sufficient for the AUTHORITY to assess the nature and scope of any suspected data breach. In the event of an unauthorized disclosure of AUTHORITY PII, the CONSULTANT will be liable for paying for the following costs to remediate any such unauthorized disclosure:

- A. The reasonable cost of providing notice of the breach to individuals affected by such breach;
- B. The reasonable cost of providing required notice of the breach to government agencies, credit bureaus, and/or other required entities;
- C. The cost of providing individuals affected by such breach with credit protection services designed to prevent fraud associated with identity theft crimes for a specific period not to exceed 12 months; and
- D. Any other service required by applicable law.

The CONSULTANT must provide any information and/or support to the AUTHORITY in issuing the actual notification and, at the AUTHORITY's sole discretion, the CONSULTANT must itself provide actual notification if the AUTHORITY desires. This Section will survive termination or expiration of this 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.

APPENDIX D

FEDERAL TRANSIT ADMINISTRATION CLAUSES

In its performance of the Agreement, Consultant will comply with all of the applicable Federal Transit Administration (FTA) clauses identified below, as indicated by a checked box next to the clause title.

- DEFINITIONS.**
- 1. FLY AMERICA REQUIREMENTS.**
- 2. ENERGY CONSERVATION.**
- 3. RECYCLED PRODUCTS.**
- 4. CARGO PREFERENCE REQUIREMENTS.**
- 5. ACCESS TO RECORDS AND REPORTS.**
- 6. FEDERAL CHANGES.**
- 7. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.**
- 8. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS.**
- 9. CIVIL RIGHTS REQUIREMENTS.**
- 10. SAFE OPERATION OF MOTOR VEHICLES.**
- 11. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.**
- 12. TELECOMMUNICATIONS EQUIPMENT OR SERVICES; VIDEO SURVEILLANCE EQUIPMENT OR SERVICES.**
- 13. NOTIFICATION REGARDING FALSE CLAIMS, FRAUD, WASTE, ABUSE, AND OTHER LEGAL MATTERS.**
- 14. VETERANS PREFERENCE.**
- 15. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION.**
- 16. LOBBYING.**
- 17. CLEAN WATER AND AIR REQUIREMENTS.**

- 18. BUY AMERICA REQUIREMENTS.
- 19. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS.
- 20. ACCESSIBILITY.
- 21. BUS TESTING.
- 22. DAVIS-BACON ACT REQUIREMENTS.
- 23. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.
- 24. SEISMIC SAFETY.
- 25. CHARTER SERVICE OPERATIONS.
- 26. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS.
- 27. SCHOOL BUS OPERATIONS.
- 28. SUBSTANCE ABUSE REQUIREMENTS.
- 29. DOMESTIC PREFERENCES FOR PROCUREMENTS.
- 30. BUILD AMERICA, BUY AMERICA ACT.

DEFINITIONS. The following definitions apply to these federal terms and conditions:

- a. "Agency" means the Livermore Amador Valley Transit Authority.
- b. "Bid" means bid, proposal, or offer.
- c. "Bidder" means bidder, proposer, or offeror.
- d. "Contract" means the agreement to which these Federal Terms and Conditions apply.
- e. "Consultant" means the person or entity named in the Purchase Order, Bid, Proposal or Contract to which these Federal Terms and Conditions apply.
- f. "FTA" means the Federal Transit Administration.
- g. "U.S. DOT" means United States Department of Transportation.

CLAUSES

1. **FLY AMERICA REQUIREMENTS.** The Consultant agrees to comply with 49 U.S.C. 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property to the extent such service is available, unless travel by foreign air carrier is a matter of necessity as defined by the Fly America Act. The Consultant must submit, if a

foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and must, in any event, provide a certificate of compliance with the Fly America requirements, if used. The Consultant agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

2. **ENERGY CONSERVATION.** The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Federal Energy Policy and Conservation Act, 42 U.S.C. § 6321 *et seq.*
3. **RECYCLED PRODUCTS.** The Consultant agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.
4. **CARGO PREFERENCE REQUIREMENTS.** The Consultant agrees: (a) to use privately owned United States Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract by ocean vessels to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Agency (through the Consultant in the case of a subcontractor’s bill-of-lading); and (c) to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, Material, or commodities by ocean vessel.
5. **ACCESS TO RECORDS AND REPORTS.** Consultant must provide all authorized representatives of the Agency, the FTA Administrator, the State Auditor and the Comptroller General of the United States access to any books, documents, papers and records of the Consultant which are related to performance of this Contract for the purposes of making audits, copies, examinations, excerpts and transcriptions. Consultant also agrees to retain and maintain, and will require its subcontractors to retain and maintain, all books, records, accounts and reports related to this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Consultant agrees to maintain the same until the Agency, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
6. **FEDERAL CHANGES.** Consultant must at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed

directly or by reference in the Agreement (Form FTA MA (30) dated November 2, 2022) between the Agency and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Consultant's failure to so comply constitutes a material breach of this Contract.

7. **NO GOVERNMENT OBLIGATION TO THIRD PARTIES.** The Agency and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and will not be subject to any obligations or liabilities to the Agency, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor/subconsultant who will be subject to its provisions.

8. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS.**
 - a. The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.

 - b. The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5353(l) on the Consultant, to the extent the Federal Government deems appropriate.

 - c. The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses will not be modified, except to identify the subcontractor/subconsultant who will be subject to the provisions.

9. CIVIL RIGHTS REQUIREMENTS.

- a. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Contract:
 - i. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Chapter 60, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the performance of the Contract. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.
 - ii. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.
 - iii. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In

addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

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

10. **SAFE OPERATION OF MOTOR VEHICLES.** The Consultant is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Consultant or the Agency. The Consultant agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Consultant owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.
11. **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.** The preceding provisions include, in part, certain terms and conditions required by U.S. DOT, whether or not expressly set forth in the preceding provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1F, dated March 18, 2013, as may be amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any the Agency requests which would cause the Agency to be in violation of the FTA terms and conditions.
12. **TELECOMMUNICATIONS EQUIPMENT OR SERVICES; VIDEO SURVEILLANCE EQUIPMENT OR SERVICES.** The Consultant represents that the Consultant, and its subcontractors and subconsultants, will not provide or use covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system, in accordance with Section 889 of the John S. McCain National Defense Authorization Act, in the performance of this Contract. “Covered telecommunications equipment or services” means any of the following: (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (3) Telecommunications or video surveillance services provided by such entities or using such equipment listed in (1) or (2); or (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of the People’s Republic of China. “Substantial or essential component” means any component necessary for the proper function or performance of a piece of equipment, system, or

service. "Critical technology" includes those critical technologies listed in 48 C.F.R. 52.204-25, subpart (a).

13. NOTIFICATION REGARDING FALSE CLAIMS, FRAUD, WASTE, ABUSE, AND OTHER LEGAL MATTERS.

A. The Consultant agrees to promptly notify the FTA Chief Counsel and the FTA Regional Counsel for Region IX if it has knowledge of (i) any current or prospective legal matter that may affect the Federal Government, including but not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason, or (ii) any matters that may affect the Federal Government, including but not limited to, the Federal Government's interests in the Federal Award supporting this Agreement, this Agreement and any amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

The Consultant further agrees to promptly notify the FTA Chief Counsel, the FTA Regional Counsel for FTA Region IX, and the U.S. DOT Office of Inspector General if it has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA, including but not limited to knowledge that a person has or may have (i) submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or (ii) committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance.

The Consultant further agrees to promptly notify Agency of any matter described above that relates to this Agreement or any other federally assisted agreement between the Consultant and Agency.

"Knowledge," as used in this section, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the Consultant's possession.

"Promptly," as used in this section, means to refer information without delay and without change.

B. The Consultant agrees to include the above clause in all subcontracts entered into for the performance of this Agreement. It is further agreed that the above clause shall not be modified, except to identify the subcontractor/subconsultant who will be subject to its provisions.

14. VETERANS PREFERENCE. To the extent practicable, the Consultant agrees that it and its subcontractors:

a. Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the requisite skills and abilities to perform the construction work required under a third party contract in connection with a capital project supported with funds appropriated or made available for 49 U.S.C. chapter 53, and

- b. Will not be required to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

15. **GOVERNMENT-WIDE DEBARMENT AND SUSPENSION.** This contract is a covered transaction subject to the requirements of 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)” and 2 CFR Part 1200, U.S. DOT regulations, “Nonprocurement Suspension and Debarment.” These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Consultant is required to verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be: (a) Debarred from participation in any federally assisted Award; (b) Suspended from participation in any federally assisted Award; (c) Proposed for debarment from participation in any federally assisted Award; (d) Declared ineligible to participate in any federally assisted Award; (e) Voluntarily excluded from participation in any federally assisted Award; or (f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Agency. If it is later determined by the Agency that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C, as supplemented by 2 C.F.R. Part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

16. **LOBBYING.** Consultant shall file the certification required by 49 CFR Part 20, “New Restrictions on Lobbying.” Consultant shall certify that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Consultant shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded to the Agency. Consultant shall ensure that all of its subcontractors/subconsultants under this Contract shall certify the same. The Agency is responsible for keeping the certification of the Consultant, who is in turn responsible for keeping the certification forms of subcontractors/subconsultants. The Bidder shall complete Standard Form SF-LLL, “Disclosure of Lobbying Activities,” which is included with the Bid Documents, including instructions for completion.

17. **CLEAN WATER AND AIR REQUIREMENTS.** The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. The Consultant agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office. The Consultant also agrees to include these requirements in each subcontract exceeding \$150,000 financed in part or in whole with federal assistance provided by the FTA.
18. **BUY AMERICA REQUIREMENTS.** The Consultant agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11. All bidders or proposers must submit the appropriate Buy America certification to the Agency with their bids or proposals, except those subject to a general waiver. Proposals that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.
19. **PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS.** Consultant agrees to comply with pre-award and post-delivery requirements set forth in 49 U.S.C. § 5323(m) and FTA's implementing regulations at 49 C.F.R. Part 663. Consultant must submit the following certifications with its bid:
- a. **Pre-Award Buy America Certification:** The Consultant must complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Consultant certifies compliance with Buy America, it must submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
 - b. **Pre-Award Solicitation Specifications Certification:** The Consultant shall submit evidence that is capable of producing rolling stock that meets the Agency's specifications set forth in the solicitation.
 - c. **Federal Motor Vehicle Safety Standards (FMVSS):** The Consultant must submit evidence of (1) the manufacturer's self-certification sticker information that the vehicle complies with applicable FMVSS in 49 CFR Part 571, as may be amended, or (2) the manufacturer's self-certification statement that the vehicle is not subject to the FMVSS in 49 CFR Part 571, as may be amended.
20. **ACCESSIBILITY.** The Consultant agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended; 29 USC § 794; 49 USC § 5301(6); 49 CFR Parts 27, 37, 38, and 39 and any implementing requirements and regulations FTA may issue. These regulations provide that no handicapped individual,

solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.

21. BUS TESTING. The Consultant [Manufacturer] agrees to comply with 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- a. A manufacturer of a new bus model or a bus produced with a major change in components or configuration must provide a copy of the final test report to the Agency at a point in the procurement process specified by the Agency which will be prior to the Agency's final acceptance of the first vehicle.
- b. A manufacturer who releases a report under paragraph (a) above shall provide notice to the operator of the testing facility that the report is available to the public.
- c. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the Agency prior to the Agency's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- d. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

22. DAVIS-BACON ACT REQUIREMENTS.

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers

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

- ii. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Consultant shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- iii. If the Consultant does not make payments to a trustee or other third person, the Consultant may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Consultant, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Consultant to set aside in a separate account assets for the meeting of obligations under the plan or program.
 - (a) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - (b) If the Consultant and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting

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

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

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(B) or (C) of Section 5.5 of the Davis-Bacon Act, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

- b. Withholding - The Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Consultant under this Contract or any other Federal contract with the Consultant, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the Consultant, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Consultant or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Agency may, after written notice to the Consultant, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- c. Payrolls and basic records
- i. Payrolls and basic records relating thereto shall be maintained by the Consultant during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the

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

(a) The Consultant shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Agency for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The Consultant is responsible for the submission of copies of payrolls by all subcontractors. Consultants and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Agency if the agency is a party to the contract, but the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Consultant or subcontractor or his or her agent

who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(i) That the payroll for the payroll period contains the information to be provided under §5.5(a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under §5.5(a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

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

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of Section 5.5 of the Davis-Bacon Act.

(d) The falsification of any of the above certifications may subject the Consultant or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

ii. The Consultant or subcontractor shall make the records required under paragraph (a)(3)(i) of Section 5.5 of the Davis-Bacon Act available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Consultant or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Consultant, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

d. Apprentices and trainees

i. Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship

program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Consultant as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where Consultant is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Consultant's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journey hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Consultant will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- ii. Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in

accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Consultant will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- iii. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- e. Compliance with Copeland Act requirements - The Consultant shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.
- f. Subcontracts - The Consultant or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Consultant shall be responsible for the compliance by any subcontractor or lower subcontractor with all the contract clauses in 29 CFR 5.5.
- g. Contract termination: Debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract and for debarment as a Consultant and a subcontractor as provided in 29 CFR 5.12.
- h. Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- i. Disputes Concerning Labor Standards - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Consultant (or any of its

subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

j. Certification of eligibility

- i. By entering into this Contract, the Consultant certifies that neither it (nor he or she) nor any person or firm who has an interest in the Consultant's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- ii. No part of this Contract shall be subcontracted to person or firm ineligible for an award of a government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

23. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. In accordance with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the United States Department of Labor regulations at 29 C.F.R. part 5, the following requirements apply to all laborers and mechanics employed by the Consultant or subcontractor in the performance of any part of the work under the Contract, including watchmen, guards, and workers performing services in connection with dredging or rock excavation. (40 U.S.C.A. § 3701)

- a. Overtime Requirements – Neither the Consultant nor its subcontractors may permit any laborer or mechanic in any workweek in which he or she is employed on such work under this Contract to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. Violation, Liability for Unpaid Wages, Liquidated Damages – In the event of any violation of the clause set forth in paragraph A of this Section, the Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Consultant and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this Section in the sum of \$10.00 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph A of this Section.
- c. Withholding for Unpaid Wages and Liquidated Damages – Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from any moneys payable on account of work performed by Consultant under any such contract or any other Federal contract with Consultant or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Consultant,

such sums as may be determined to be necessary to satisfy any liabilities of Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this Section.

- d. Subcontracts – The Consultant shall insert in any subcontract the clauses set forth in this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Consultant shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Section.
- e. Payrolls and Basic Records – Payrolls and basic records relating thereto shall be maintained by the Consultant during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Consultant shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and shall also maintain records that show the costs anticipated or the actual cost incurred in providing such benefits. Should the Consultant employ apprentices or trainees under approved programs, it shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- f. Occupational Safety and Health Act – The Consultant agrees to comply with Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 333, and applicable DOL regulations, “Safety and Health Regulations for Construction”, 29 CFR Part 1926. Among other things, the Consultant agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

The Consultant also agrees to include the requirements of this Subsection F in each subcontract. The term “subcontract” under this Subsection is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a “subcontractor” under this Section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific

project on a customized basis. Thus, a supplier of materials that will become an integral part of the construction is a “subcontractor” if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a “subcontractor.” The requirements of this Section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

24. **SEISMIC SAFETY.** The Consultant agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The Consultant also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.
25. **CHARTER SERVICE OPERATIONS.** The Consultant agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be “incidental,” i.e., it must not interfere with or detract from the provision of mass transportation.
26. **PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS.** The Consultant agrees to the comply with applicable transit employee protective requirements as follows:
- a. **General Transit Employee Protective Requirements** - To the extent that FTA determines that transit operations are involved, the Consultant agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient’s project from which Federal assistance is provided to support work on the underlying contract. The Consultant agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
 - b. **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities** - If the contract involves transit operations financed in whole or in part with Federal assistance

authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Consultant agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Consultant agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

- c. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Consultant agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

The Consultant also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

27. **SCHOOL BUS OPERATIONS**. Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles or facilities.
28. **SUBSTANCE ABUSE REQUIREMENTS**. Agency adheres to US DOT/FTA federal regulations, 49 CFR Parts 40 and 655, governing mandatory drug and alcohol testing and education for "safety-sensitive" employees. Pursuant to these regulations, the Agency requires that contractors who "stand in the shoes" of the Agency are subject to these regulations, and must have a Substance Abuse Policy, a drug and alcohol testing program and provide training for its safety-sensitive employees. Consultant is required to comply fully with all DOT and FTA regulations prohibiting drug use and alcohol misuse by all operators and maintenance personnel or employees of subcontractors performing safety-sensitive functions. The Consultant's policy, testing program and training must comply with these regulations: 49 CFR Part 655, ("Prevention of Prohibited Drug Use in Transit Operations and Prevention of Alcohol Misuse in Transit Operations") and 49 CFR Part 40, ("Procedures for Transportation Workplace Drug and Alcohol Testing Procedures").

The Consultant will be required to cause its prospective safety-sensitive employees who may be assigned to perform safety-sensitive duties for the Agency to undergo pre-employment drug testing and make drug test result inquiries of prior DOT-regulated employers. Safety sensitive employees shall also be subject to post-accident testing,

reasonable suspicion testing, and random testing, and other tests as required by 49 CFR Part 655.

The Consultant must notify the Agency's Risk Administrator immediately of any violation of the regulations or failure to test.

Any employee of the Consultant found to have violated the drug and alcohol regulations is subject to removal from duties under the contract, depending on the facts and circumstances of the situation.

If the Consultant utilizes their own pre-established program or a third party administrator's, Consultant must fully cooperate with the Agency in such monitoring efforts, provide any requested documents or information, and comply with any corrective action that the Agency requires of Consultant. Consultant further agrees to annually certify its compliance with Part 655 by December 1st and to submit the Management Information Systems ("MIS") reports before March 1st (for the prior calendar year) to the Agency. Consultant agrees that all records produced and maintained in the performance of the program are subject to review by the Agency in a facility not more than 100 miles away. Further, Consultant may be required to submit quarterly MIS reports to the Agency.

If the Consultant is included in the Agency's Random Testing Program, the Consultant is not released from all other DOT regulations such as: adhering to DOT's hiring requirements, including making inquiries of past DOT-regulated employers and pre-employment testing; conducting reasonable suspicion and post-accident testing when warranted; and training safety-sensitive employees and their supervisors for the requisite time required by law. Consultant agrees to timely notify the Agency with names of their safety-sensitive employees, including any additions or deletions during the contract term.

Consultant agrees to submit within thirty (30) days of award of the contract (1) verification that its safety-sensitive employees are included as part of a random testing pool; (2) a copy of Consultant's substance abuse policy; and (3) the name of its third party administrator, if applicable. Failure to submit such documents within the prescribed time period, or failure to submit any other documentation relevant to the substance abuse testing requirements as required by the Agency, may result in the contract being terminated for default.

29. **DOMESTIC PREFERENCES FOR PROCUREMENTS.** Pursuant to 2 CFR § 200.322, the Consultant should, to the greatest extent practicable under this Agreement and as appropriate and to the extent consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Consultant must include this requirement in agreements with subcontractors, including all contracts and purchase orders for work or products under this Agreement.
30. **BUILD AMERICA, BUY AMERICA ACT.** For construction materials used in the Project, the Contractor agrees to comply with the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, U.S. DOT, and FTA, unless a waiver applies.

APPENDIX E

TASK ORDER PROCESS

Task Orders (TOs) will be issued to the Consultant at any time during the contract period of performance. Award of TOs will be based on the superiority of a Consultant's proposal in response to a TO Proposal Request. Services are to be provided on an as-needed basis throughout the term of the contract and must be completed within the period specified in the TO. Performance of services under issued TOs **must be completed** within the term of the Agreement.

The Services to be furnished by the Consultant may vary according to LAVTA's needs. The actual services to be provided shall be described in specific TOs. Each TO will contain a period of performance specific to the TO. LAVTA expressly reserves the right to contract for performance of services with other consultant(s). There is no guaranteed minimum level of effort to be expended or compensation to be paid under this RFP.

Organizational conflicts of interest, if any, will be assessed at the TO level. Consultant shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under TOs. It is the Consultant's responsibility to ensure that no organizational conflicts of interest exist. If the Consultant has a conflict of interest, real or apparent, it will not be allowed to provide services for those projects.

A. Issuance:

As needs arise, LAVTA's Director of Customer Experience will issue a TO Proposal Request to Consultant, which will include the Scope of Work, deliverables, and required schedule. Consultant is responsible for preparing and submitting to the Director of Customer Experience a TO Proposal within **five (5) calendar days** of Consultant's receipt of LAVTA's request or by the due date as indicated in the specific TO Proposal Request.

The TO Proposal must include the Consultant's understanding of the TO Scope of Work, deliverables, and schedule, and a cost proposal. The Consultant must also include the names of the Consultant's (and subcontractor's, if any) personnel proposed under the TO Proposal.

LAVTA will review the TO Proposal for compliance with contractual requirements, and will conduct a technical evaluation to ensure the TO Proposal is complete and consistent with the Scope of Work, that personnel assigned are acceptable, and that all costs proposed are reasonable and appropriate. If required, LAVTA will conduct negotiations to address exceptions and costs identified in the TO Proposal. After negotiations, Consultant will submit a revised TO Proposal within five (5) days. LAVTA will issue a TO within five (5) days of receipt of an accepted TO Proposal.

If a DBE goal has been assigned to a TO Proposal Request, Consultant shall meet the DBE goal in its proposal or shall document that it has made sufficient good faith efforts to meet the goal. LAVTA will evaluate the Consultant's good faith efforts to meet the DBE goal before a TO is authorized. Good faith efforts may include the following:

- Advertising or other outreach to seek DBEs.
- The solicitation of proposals from DBEs.
- The selection of types and units of work for DBEs to participate in.

Reasons and other evidence why DBEs were rejected for the TO.
Efforts to help DBEs participate in the TO, such as loan assistance, reduction in insurance requirements, etc.
Contacting minority or women trade or other organizations to seek DBEs.
Other data to support a demonstration of good faith efforts.

If Consultant fails to meet a DBE goal on a TO Proposal Request and also fails to demonstrate that good faith efforts were made to meet the goal, the Consultant may be denied the award of the TO and the Consultant shall be afforded a reconsideration hearing.

B. Amendments and Compensation:

TOs are governed by the terms and conditions of the Agreement, and by any other specific terms and conditions identified in the TO. Such additional terms and conditions, if any, will be identified in the TO Proposal Request. Work will be authorized by LAVTA through the issuance of a TO.

Work performed by the Consultant prior to issuance of a TO is understood to be at-risk, and Consultant may not be compensated for said work.

TO Amendments:

Any addition to, reduction of, and/or other revision of the scope of work for a TO that is approved by LAVTA requires a TO Amendment. A TO Proposal Request for the Amendment will be issued to the Consultant by LAVTA. Consultant is responsible for preparing and submitting a TO Proposal within **ten (10) calendar days** of Consultant's receipt of LAVTA's request or by the due date as indicated in that specific TO Proposal Request. LAVTA reserves the right to determine in its sole discretion if completion of the TO Amendment is needed. **Performance of work related to additional scope by the Consultant prior to authorization to perform such work by LAVTA is understood to be at-risk, and Consultant may not be compensated for said work.**

TO Compensation and Rates:

TO cost will be based on rates established in the underlying Agreement, and the time and deliverable requirements in the TO. TOs will be issued on either a Cost Plus Fixed Fee with a ceiling (CPFF) expenses, and/or Specified Rates of Compensation (SROC), depending on the TO scope of services. TO estimated total cost amounts will be negotiated based on estimated labor hours and previously approved Position Title and/or Labor Categories and other rates set forth in Consultant's Cost Proposal and as set forth in each TO Proposal. TOs may vary significantly in size. Compensation is further described in **Appendix B of this RFP.**

C. TO Reporting and Invoicing:

If required by a TO's scope of work, the Consultant shall submit to LAVTA an Earned Value Report within **seven (7) business days** after the end of the billing period. These reports shall contain the task/sub-task(s) as set forth in the TO and will include, at a minimum, a description of all work performed within the reporting period, and the planned, forecasted, earned and actual costs for the reporting period and cumulative to date. The reporting period shall be identical to the billing period established for the work.

The report shall include a narrative status report containing work accomplished to date and a forecast for work to be completed within the billing period. The narrative report shall note significant milestones achieved. This report shall be supplied to the Project Manager and shall also be attached to the appropriate corresponding invoice. Consultant is required to submit invoices for services performed no later than **thirty (30) days** after the close of the calendar month in which such costs were incurred. Failure to submit invoices in a timely manner may result in LAVTA rejecting such invoices.

The report will cover activities performed on all open TOs during the billing period and address the following topics:

- Summary of key issues, trends and risks, including identification of potential cost/schedule overruns, the reasons for such impact, and the mitigation measures proposed. The summary shall also describe any outstanding responses that the Consultant has requested from LAVTA or a third party agency that may potentially impact the cost or schedule of the work;

- Summary of deliverables that includes a table showing original, revised forecast and actual dates for each deliverable. Any actual or revised forecast dates that deviate from the original plan shall be accompanied by an explanation of the causes for such deviations;

- Identify any TO Proposals or Amendments in process;

- Identify any out of scope work; and

- Compare the percent billing to percent work complete.

D. Meetings:

LAVTA and Consultant shall meet quarterly or at a time period as mutually agreed upon to review Consultant's performance under specific TOs and/or the Agreement.

E. LAVTA's Rights:

Although it is LAVTA's intention to satisfy its Services needs by contracting with Consultant, LAVTA expressly reserves the right to contract for future Services with other firms for projects that may arise. Such Services will be obtained through a separate competitive solicitation, and LAVTA shall solely determine how such specific projects will be awarded.

F. Consultant's Key Personnel:

Consultant shall be responsible for the management of technical and administrative personnel used for each TO. Each TO will identify LAVTA's staff representative as TO Manager and/or Project Manager. Consultant shall be responsible for any errors and omissions and is financially responsible to cover the cost of any and all deficient work resulting from the Consultant's errors and omissions, including re-performance of the work.