

Livermore Amador Valley
TRANSIT AUTHORITY



March 1, 2024

RE: Request for Proposal (RFP) for State and Federal Advocacy Services

Dear Proposers,

The Livermore Amador Valley Transit Authority (LAVTA) invites you to submit a proposal to provide state and/or federal advocacy support services in regulatory, legislative, operations, and funding issues of interest to LAVTA as further detailed in the Scope of Services, Appendix A, to this RFP ("Services"). These services encompass two distinct work areas:

Project 1. State Advocacy Services.

Project 2. Federal Advocacy Services.

Proposers may submit a proposal for Project 1 only, Project 2 only, or for both projects, in accordance with the Cost Proposal Form (Form 5). Cost estimates for Project 1 and Project 2 should be submitted independent of each other. Proposers submitting on both projects may submit a third cost estimate for a combined award of both projects on Form 5. Costs must include, but not be limited to, all labor, shipping, postage, materials, supplies, taxes, overhead, insurance, and profit and all other costs necessary to perform the work. A Proposer's failure to submit a Cost Proposal may result in rejection of the proposal as non-responsive.

LAVTA anticipates awarding a contract for a one-year term to the highest-ranked Proposer or Proposers. The successful Proposer or Proposers will execute an Agreement for Services for a not-to-exceed compensation amount.

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

<u>Activity</u>	<u>Date</u>
RFP Issued	March 1, 2024
Questions, and Requests for Clarification/ (RFCs) Due	March 8, 2024 prior to 4:00 p.m.
LAVTA's Response to Questions and RFCs	March 13, 2024 by end of business
Proposals Due	March 20, 2024 prior to 2:00 p.m.
Interviews (if required)	March 25-26, 2024, if needed
Contract Award (tentative)	March 28, 2024
Notice to Proceed (tentative)	April 1, 2024

All Questions and/or RFCs must be submitted in writing by email to Jennifer Yeamans at **procurements@lavta.org**.

LAVTA's written response to Questions and/or RFCs will be posted on LAVTA's website or will be emailed to Proposers who received a copy of the RFP. Please refer to the above solicitation timeline.

Proposals will be received via email to **procurements@lavta.org** until 2:00 p.m. on March 20, 2024. Hard copy submissions will NOT be accepted. Hard copies received will be returned (unopened) to Proposers without consideration.

Submission of a proposal constitutes a firm offer to LAVTA for 120 days from the submission deadline for proposals. 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.

For questions regarding this RFP, please contact Jennifer Yeamans at (925) 455-7555 or **procurements@lavta.org**.

Sincerely,



Christy Wegener
Executive Director

Attachments

1. PROPOSAL CONTENTS AND REQUIREMENTS

A. Company Qualifications & Approach to Scope of Services

Each Proposer must complete Proposal Cover Form (Form 1), and 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.

The successful proposer will demonstrate its approach to the scope of services in its proposal, including, but not limited to, information demonstrating that the Proposer:

- Has demonstrated and tangible experience successfully representing and advocating for clients.
- Has demonstrated experience with lobbying for successful outcomes, particularly in a public transit environment.
- Demonstrated experience with advocating for Bay Area transit agencies.
- Has a demonstrated understanding of local, state, and federal legislative and regulatory conditions, LAVTA's project goals, and LAVTA's desired outcomes.

Proposers must describe the qualifications and experience of the proposed project team. The proposal must adequately demonstrate the Proposer's understanding of the project, specifically including its demonstrated ability to satisfy the requirements of the Scope of Work, and LAVTA's desired outcomes. The proposal must also identify any critical issues for the project and propose methods to address and track those issues, including any conflict of interest issues that might arise.

Proposers must describe their experience in providing the specified services for similar operations and/or entities, including public transportation agencies, if any (refer to Appendix A). 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. For each submitted Reference Form (Form 2), Proposers must supply a brief description of the services provided, the timeframe the services were provided, and current client contact information.

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

B. Cost Proposal

Proposers must submit a Cost Proposal on Form 5 that includes a monthly retainer for Project 1 only, Project 2 only, or for both projects. All services and costs will be included in the retainer, including but not limited to, all labor, shipping, postage, materials, supplies, taxes, overhead, insurance, and profit and all other costs necessary to perform

the work. A Proposer's failure to submit a Cost Proposal may result in rejection of the proposal as non-responsive.

C. Use of Subconsultants

A Consultant intending to use any subconsultants to perform the Services must do so in accordance with the requirements of this RFP. Any and all subconsultants must be listed on the Designation of Subconsultants/Suppliers Form (Form 4), submitted with the proposal and approved by LAVTA prior to contract award.

D. 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.

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.

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, (Form 1). Proposer's failure to acknowledge in its proposal receipt of Addenda may, at LAVTA's sole option, cause the proposal to be rejected.

E. Conflicts of Interest

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 the Agreement. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of the Agreement. Violation of this provision may result in the Agreement being deemed void and unenforceable.

2. EVALUATION OF PROPOSALS AND SELECTION PROCESS

LAVTA intends to award one or more contracts to the highest ranked, most qualified, responsible Proposer(s) that submits a responsive proposal for provision of the Services. LAVTA reserves the right to request additional information and clarifications during the evaluation and selection process from any or all Proposers regarding their proposals.

A. Selection Committee

A Selection Committee (Committee), which will include members of LAVTA's staff and possibly one or more outside experts, will review and rank the proposals submitted for each Project. The Committee's evaluation 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.

B. Proposal Evaluation Process

For each Project, 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(s) (i.e. references).

Evaluation Criteria	Possible Technical Outcome
<p>Company Qualifications, Experience & References:</p> <ul style="list-style-type: none"> • Proposer’s qualifications to perform the Services, specifically including its demonstrated ability to satisfy the requirements of the Scope of Work. • Demonstrated experience with advocating for Bay Area transit agencies. • Demonstrated experience with lobbying with successful outcomes, particularly in a public transit environment. 	<p>0 – 30 POINTS</p>
<p>Qualifications of Personnel:</p> <ul style="list-style-type: none"> • Key Personnel’s qualifications to perform the Services. • Key Personnel’s relevant experience performing work that is the same or similar to the Services. 	<p>0 – 30 POINTS</p>
<p>Reasonableness of Cost:</p> <ul style="list-style-type: none"> • Proposer’s reasonableness of retainer costs. 	<p>0 – 20 POINTS</p>
<p>Approach to Scope of Services:</p> <ul style="list-style-type: none"> • The Consultant’s proposal adequately describes approach to the scope of work described in Section 1A and Appendix A. • Demonstrated understanding of local conditions, project goals and desired outcomes. 	<p>0 – 20 POINTS</p>
<p>Maximum Total =</p>	<p>100 POINTS</p>

C. Revised Proposals, Interviews and Negotiations

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.

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 for each Project, in accordance with the evaluation criteria set forth above.

LAVTA also reserves the right to further reduce the competitive range for each Project 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.

LAVTA reserves the right to modify or 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 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.

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.

3. CONFIDENTIALITY

A. Confidentiality and Waiver of Claims

1. 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.
2. 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:
 - (1) The section and page number of the proposal where the information is located; and
 - (2) An explanation of why the information is exempt from disclosure under the CPRA.
3. By submitting a proposal, Proposer:
 - a) consents to the release of the redacted version of the proposal; and
 - b) consents to the release of any portion of its proposal not included in the confidentiality index; and
 - c) waives all claims against LAVTA, its directors, officers, employees and agents, for the disclosure of such information.
4. 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.
5. 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.
6. 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.

4. 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 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.

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. 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 (Form 3). 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) 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. Proposers are encouraged to obtain DBE participation on this project, although no contract-specific DBE participation goal has been established for this contract. 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 DBEs participation do not exist.

C. Insurance and Indemnification Requirements

Proposers are instructed to carefully review the insurance and indemnification provisions set forth in the Insurance Requirements (Appendix C) and Sample Agreement (Appendix 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 of LAVTA. 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 the Insurance Requirements (Appendix C), verification of availability of required insurance must otherwise be provided.

D. 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 SUBMISSION CHECKLIST

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

1. Form 1: Proposal Cover Form
2. Proposal (RFP, Section 1)
3. Insurance Requirements: Certificate of Insurance or Letter from Insurance Broker (RFP, Section 5.C and Appendix C)
4. Form 5: Cost Proposal
5. Forms 2, 3, and 4:
 - Form 2: Reference Form
 - Form 3: Exception Form
 - Form 4: Designation of Subconsultants/Suppliers

FORMS

Form 1 – Proposal Cover Form
Form 2 – Reference Form
Form 3 – Exception Form
Form 4 – Designation of Subconsultants/Suppliers
Form 5 – Cost Proposal Form

APPENDICES

Appendix A – Scope of Services
Appendix B – Sample Agreement for Services
Appendix C – Insurance Requirements

FORM 1: PROPOSAL COVER FORM

**PROPOSAL COVER FORM
for
STATE AND FEDERAL ADVOCACY SERVICES
RFP # 2024-04**

Livermore Amador Valley Transit Authority
Livermore, CA

A. GENERAL INFORMATION

DATE SUBMITTED: _____

NAME OF FIRM UNDER WHICH BUSINESS IS CONDUCTED:

PROJECT(S) FOR WHICH YOU ARE PROPOSING IN THIS SUBMITTAL:

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 120 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, has included such requested modifications in its proposal. Exceptions, or modifications, if any, should be clearly identified and submitted on the Exception Form (Form 3).

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 must be signed by the owner of the company.

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

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

FORM 2: REFERENCE FORM

Proposers must 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 LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY AS REFERENCES.

If contract was terminated, Proposer must 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

FORM 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
1			
2			
3			
4			
5			

FORM 4: DESIGNATION OF SUBCONSULTANTS/SUPPLIERS

Proposer's Name: _____

Address: _____

Is your firm a Disadvantaged Business Enterprise: Yes _____ No _____

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.

	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/ Proposal Accepted? (Yes/No)
1					
2					
3					

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

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

FORM 5: COST PROPOSAL

**State and Federal Advocacy Services
Request for Proposals #2024-04**

**Project 1: State Advocacy Services
and
Project 2: Federal Advocacy Services**

Proposers may submit proposals for either or both of the projects. The below proposal prices are an all-inclusive retainer, inclusive of labor, materials, taxes, insurance, overhead, profits, all reasonable business and travel expenses, and all other costs necessary to perform the work in accordance with the contract documents.

Monthly Retainer for Project 1: State Advocacy Services \$ _____

AND/OR

Monthly Retainer for Project 2: Federal Advocacy Services \$ _____

Complete the following if proposing on both Projects:

**Total Monthly Retainer For Projects 1 and 2: State and
Federal Advocacy Services [if applicable]** \$ _____

Appendix A
SCOPE OF WORK

SCOPE OF WORK

STATE AND FEDERAL ADVOCACY SERVICES

In February 2024, LAVTA's Board of Directors approved its 2024 Legislative Program (available via the following link: https://wheelsbus.com/wp-content/uploads/2024/02/6.1_SR_2024-Leg-Program.pdf), outlining LAVTA's strategies to promote its interests in the coming calendar year, and identifying key priorities for LAVTA to advance major projects and initiatives, especially to maximize available funding sources for transit, and in particular funding for the agency's facility and zero-emission fleet transition needs.

This Scope of Work intends to support LAVTA's priorities in its 2024 Legislative Program, as well as other areas LAVTA may need advocacy services. The successful Proposer(s) is/are expected to perform the following tasks:

Project 1. State Advocacy Services

- Meet with LAVTA executive and legislative staff on a regular basis.
- Provide monthly written reports to the LAVTA Board of Directors or Committees, and presentations upon request.
- Represent and advocate on behalf of LAVTA with relevant State agencies and related interest groups, including but not limited to the following: the Governor's Administration, California State Transportation Agency (CalSTA), Caltrans, California Transportation Commission (CTC), California Air Resources Board (CARB), California Energy Commission (CEC), Occupational Safety and Health Administration (OSHA), California Highway Patrol (CHP), the Metropolitan Transportation Commission (MTC), and the State Legislature.
- Facilitate meetings with legislators and legislative staff, key personnel with the aforementioned state agencies to promote LAVTA projects and priorities and address LAVTA concerns.
- Assist with and support State funding requests for LAVTA projects and priorities.
- Develop and maintain contact with members of the Legislature and state agencies to facilitate regular communication about LAVTA's projects and priorities.
- Identify and evaluate the potential impacts of proposed state legislation, policies, and regulations on LAVTA.

Project 2. Federal Advocacy Services

- Meet with LAVTA executive and legislative staff on a regular basis.
- Provide monthly written reports to the LAVTA Board of Directors or Committees, and presentations upon request.

- Represent and advocate on behalf of LAVTA with relevant Federal agencies and related interest groups, including but not limited to: the Federal Transit Administration, U.S. Department of Transportation, and U.S. Department of Energy
- Facilitate meetings with Federal legislators and legislative staff and key personnel with the aforementioned agencies to promote LAVTA projects and priorities and address LAVTA concerns.
- Assist with and support Federal funding requests for LAVTA projects and priorities.
- Develop and maintain contact with members of Congress and federal agencies to facilitate regular communication about LAVTA's projects and priorities.
- Identify and evaluate the potential impacts of proposed federal legislation, policies, and regulations on LAVTA.

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

AGREEMENT SUMMARY*

Board of Directors' Date of Award:

Resolution Number:

Effective Date of Agreement:

Services to be Performed (Section 1):

Term of Agreement (Section 3):

Consultant's Key Representative (Section 4):

Compensation (Section 5): The not to exceed amount of \$ _____

*This Summary is provided for convenience only and is qualified by the specific terms and conditions of the Agreement that will control any conflict between this Summary and the terms of the Agreement.

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SAMPLE

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

1. SCOPE OF SERVICES

This is an Agreement to provide state and federal advocacy 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 care, skill, efficiency, and judgment of consultants with special expertise in providing advocacy 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 [REDACTED], which is attached hereto and incorporated herein as Exhibit A, as supplemented by the CONSULTANT’s written proposal dated [REDACTED], attached hereto and incorporated herein as Exhibit B.

2. AGREEMENT DOCUMENTS

This Agreement consists of the following documents:

- (1) This Agreement including Attachment A Insurance Requirements;
- (2) Exhibit A, Request for Proposals;
- (3) 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 one-year term commencing upon [REDACTED] (Effective Date) and ending on [INSERT DATE]. The CONSULTANT will furnish the AUTHORITY with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the solicitation documents.

It is understood that the term of the Agreement is subject to the AUTHORITY’s right to terminate the Agreement in accordance with Section 23 of this Agreement.

4. CONSULTANT’S REPRESENTATIVE

At all times during the term of this Agreement [REDACTED] will serve as the primary staff person of the CONSULTANT to undertake, render, and oversee all of the services under this Agreement. Upon written notice by the CONSULTANT and approval by the AUTHORITY, which will not be unreasonably withheld, the CONSULTANT may substitute this

person with another person, who will possess similar qualifications and experience for this position.

5. COMPENSATION

The CONSULTANT agrees to perform all of the services included in Section 1 for a monthly retainer of \$ [REDACTED] for a total not-to-exceed amount of [REDACTED] (\$ [REDACTED]), in accordance with Exhibits A and B. The total amount will include all labor, materials, taxes, profit, overhead, insurance, subcontractor/subconsultant costs and all other costs and expenses incurred by the CONSULTANT. The AUTHORITY will pay the CONSULTANT in accordance with Section 6.

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 #2024-04, 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].

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

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

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

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

8. OWNERSHIP OF WORK

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

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

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

9. CONFIDENTIALITY

Any AUTHORITY materials that the CONSULTANT has access or materials prepared by the CONSULTANT during the course of this Agreement (“confidential information”)

will be held in confidence by the CONSULTANT, which will exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of the CONSULTANT as necessary to accomplish the rendition of services set forth in Section 1 of this Agreement.

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

10. USE OF SUBCONSULTANTS

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

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

11. CHANGES

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

12. RESPONSIBILITY: INDEMNIFICATION

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

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

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

The CONSULTANT further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses of defense as they are incurred. If any judgment is rendered against the AUTHORITY or any of the other individuals enumerated above in any such action, the CONSULTANT will, at its expense, satisfy and discharge the same. This indemnification will survive termination or expiration of the Agreement.

13. INSURANCE

Refer to 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. LITIGATION SUPPORT

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

17. AUTHORITY WARRANTIES

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

18. AUTHORITY REPRESENTATIVE

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

19. WARRANTY OF SERVICES

A. The CONSULTANT warrants that its services will be performed in accordance with the professional standards of practices of comparable legislative advocacy firms at the time the services are rendered.

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

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

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

iii. The right to terminate the Agreement for default.

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

20. CLAIMS OR DISPUTES

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

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

If based on an act or failure to act by the AUTHORITY, such notice will be given to the AUTHORITY prior to the time that the CONSULTANT has started performance of the

work giving rise to the potential claim for additional compensation. In all other cases, notice will be given within 10 days after the happening of the event or occurrence giving rise to the potential claim.

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

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

21. REMEDIES

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

22. TEMPORARY SUSPENSION OF WORK

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

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

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

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

23. TERMINATION

A. Termination for Convenience. The AUTHORITY may terminate this Agreement for convenience at any time by giving sixty days written notice to the CONSULTANT. Upon receipt of such notice, the CONSULTANT may not commit itself to any

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

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

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

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

24. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

All CONSULTANT and subcontractor/subconsultant costs incurred in the performance of this Agreement will be subject to audit. The CONSULTANT and its subcontractors/subconsultants will permit the AUTHORITY, the State Comptroller, and their authorized representatives, to inspect, examine, take excerpts from, transcribe, and copy the CONSULTANT's books, work, documents, papers, materials, payrolls records, accounts, and

any and all data relevant to the Agreement at any reasonable time, and to audit and verify statements, invoices or bills submitted by the CONSULTANT pursuant to this Agreement. The CONSULTANT will also provide such assistance as may be required in the course of such audit. The CONSULTANT will retain these records and make them available for inspection hereunder for a period of four (4) years after expiration or termination of the Agreement.

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

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

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

26. EQUAL EMPLOYMENT OPPORTUNITY (EEO)

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

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

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

The CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the AUTHORITY's Procurement Officer, advising the labor union or workers' representative of the CONSULTANT's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

27. 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. No contract-specific DBE participation goal has been established for this Agreement. The 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 DBEs participation do not exist.

28. CONFLICT OF INTEREST

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

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

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

No person previously in the position of director, officer, employee or agent of the AUTHORITY during his or her tenure or for one (1) year after that tenure will have any interest, direct or indirect, in this Agreement or the proceeds under this Agreement, nor may any such person act as an agent or attorney for, or otherwise represent the CONSULTANT by making any formal or informal appearance, or any oral or written communication, before the AUTHORITY, or any officer or employee of the AUTHORITY, for a period of one (1) year after leaving office or employment with the AUTHORITY if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant, or contract.

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

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

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

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

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

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

The CONSULTANT will maintain written policies prohibiting organizational conflicts of interest and will ensure that its employees are fully familiar with these policies. The CONSULTANT will monitor and enforce these policies and will require any subconsultants and affiliates to maintain, monitor, and enforce policies prohibiting organizational conflicts of interest.

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

29. 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.

30. 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.

31. 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.

32. 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.

33. NO THIRD PARTY BENEFICIARIES

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

34. 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.

35. 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.

36. 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.

37. 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.

SAMPLE

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

**LIVERMORE AMADOR VALLEY TRANSIT
AUTHORITY:**

CONSULTANT: (See footnote below)*

Signature: _____

Signature: _____

Print: _____

Print: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

Signature: _____

Print: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Attorney for the AUTHORITY

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

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

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

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

The insurance requirements specified in this section shall apply to Consultant and any subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms, or corporations that Consultant authorizes to work under this Agreement (hereinafter collectively referred to as “Agents”). Consultant and all Agents are required to procure and maintain at their sole cost and expense the insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of this Agreement. To the extent that any Agent does not procure and maintain such insurance coverage, Consultant shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling Consultant’s indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event Consultant or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the Consultant’s insurance be primary without any right of contribution from the Authority. Prior to beginning work under this contract, Consultant shall provide the Authority with satisfactory evidence of compliance with the insurance requirements of this section.

A. Minimum Types and Scope of Insurance

1.) Workers’ Compensation and Employers’ Liability Insurance

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

2.) Commercial General Liability Insurance

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

- a. This insurance shall include coverage for, but not be limited to:
 - Premises and operations.

- Products and completed operations.
- Contractual liability.
- Personal injury.
- Advertising injury.
- Explosion, collapse, and underground coverage (xcu).
- Broad form property damage.

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

- Additional Insured.
- Cross Liability or Severability of Interests Clause.
- Primary and Non-Contributory wording.
- Waiver of Subrogation.

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

3.) **Business Automobile Liability Insurance**

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

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

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

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

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

4.) **Professional Liability Insurance**

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

5.) Property Insurance.

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

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

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

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

- Waiver of Subrogation

B. ENDORSEMENTS

1.) Additional Insured

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

2.) Waiver of Subrogation

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

3.) Primary Insurance

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

4.) Severability of Interests or Cross Liability

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

C. EVIDENCE OF INSURANCE

All Coverages

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

D. GENERAL PROVISIONS

1.) Notice of Cancellation

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

2.) Acceptable Insurers

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

3.) Self-insurance

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

4.) Failure to Maintain Insurance

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of Consultant's personnel and equipment have been removed from the Authority

property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

5.) Claims Made Coverage

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

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

6.) Deductibles and Retentions

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

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