

STAFF REPORT

SUBJECT: Approval of Bus Advertising Service Contract with the Bay Area Air Quality Management District

FROM: Christy Wegener, Director of Planning and Operations

DATE: November 28, 2017

Action Requested

Receive staff report and forward to Board for approval.

Background

LAVTA staff have worked with the Bay Area Air Quality Management District (Air District) staff to finalize a bus advertising service contract for Spare the Air advertising on seven of LAVTA's buses to support the Agency's Shared Autonomous Vehicle (SAV) project. The funding contract is provided as Attachment 1.

Discussion

In October 2016, the Air District Board approved a project to wrap seven of LAVTA's buses in Spare-the-Air advertising. The funds for the bus advertising (\$46,000 per bus, per year) would be used to fund LAVTA's Shared Autonomous Vehicle (SAV) project to test first/last mile connectivity to BART in the City of Dublin. The advertising contract is a one-year contract with two, one-year extensions that are executable at the Air District's discretion.

Fiscal Impact

The bus advertising will result in \$80,500 per quarter, or \$322,000 per year, for a total of \$966,000 over three years.

Recommendation

Receive staff report and forward to Board for approval.

Attachments:

1. Draft Air District Bus Advertising Services Contract
2. Resolution 36-2017

BAY AREA AIR QUALITY MANAGEMENT DISTRICT**GRANT PROJECT AND SPONSORSHIP CONTRACT****CONTRACT NO. 2017.013**

1. **PARTIES** - The parties to this Contract (“Contract”) are the Bay Area Air Quality Management District (“DISTRICT”), whose address is 375 Beale Street, Suite 600, San Francisco, CA 94105, and the Livermore Amador Valley Transit Authority, (LAVTA), whose address is 1362 Rutan Drive, Suite 100, Livermore, CA 94551.
2. **RECITALS**
 - A. DISTRICT is the regional agency with primary responsibility for regulating stationary source air pollution in the San Francisco Bay Area in the State of California. DISTRICT is authorized to enter into this Contract under California Health and Safety Code Section 40701.
 - B. LAVTA operates Wheels buses that have a high profile along the I-580 and I-680 corridors and throughout the Tri-Valley and therefore provide a unique platform for messaging for the DISTRICT’s Spare the Air Program.
 - C. LAVTA seeks DISTRICT sponsorship of its participation in an electric Shared Autonomous Vehicle (SAV) pilot project, EasyMile, which is currently being tested at the GoMentum Station in Concord, CA (GoMentum).
 - D. DISTRICT seeks to support projects that reduce mobile source emissions and to enhance awareness of options the public can take to achieve clean air to protect the public’s health and the environment.
 - E. On October 19, 2016, the DISTRICT’s Board of Directors approved the award of DISTRICT’s Transportation Fund for Clean Air (TFCA) Regional Funds to LAVTA to support LAVTA’s participation in the EasyMile project including testing of two SAVs in Dublin, CA by 2019 and deployment of two SAVs for passenger service by 2020, and promotion of the District’s Spare the Air message on seven (7) Wheels buses.
 - F. As such, DISTRICT desires to acquire from LAVTA certain advertising and promotional benefits as described herein, and LAVTA desires to provide such benefits to DISTRICT in exchange for DISTRICT sponsorship of the EasyMile project in accordance with the terms and provisions of this Contract.
3. **TERM** - The term of this Contract shall be upon Contract execution to December 31, 2020 (Term), unless terminated earlier as provided herewith.
4. **TERMINATION** –
 - A. Either party may terminate this Contract at any time, at will, and without specifying any reason, by notifying the other party in writing. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of delivery of the notice of termination, and shall be delivered in accordance with the provisions of section 12, “Notices,” below. In the event of such termination, DISTRICT will stop all future payments with regard to costs and contractual

obligations that are entered into subsequent to the date of delivery of the notice of termination. However, DISTRICT, will still be obligated to pay LAVTA payment related to contractual obligations entered into prior to the date of termination. In such case, LAVTA shall be responsible for any costs related to the removal of 'Spare the Air' printed advertisement. If the DISTRICT has paid LAVTA more than the amount of funds to which LAVTA is eligible, LAVTA shall return the difference between the funds paid and the funds eligible to the DISTRICT within sixty (60) calendar days of the effective date of termination.

- B. Either party may terminate this Contract for breach by the other party.
- i) Failure to perform any agreement or obligation contained in this Contract or failure to perform the services in a satisfactory manner shall constitute a breach of the Contract.
 - ii) The non-breaching party may terminate the Contract by delivery of a written notice of breach. In the alternative, at its sole discretion, the non-breaching party may require the breaching party to cure the breach. The notice of breach shall specify the nature of the breach and the date by which such breach must be cured.
 - iii) The notice of breach shall be provided in accordance with the notice requirements set forth in section 12.
 - iv) The non-breaching party reserves all rights under law and equity to enforce this Contract and recover any damages.
5. ADVERTISING AND PROMOTION - LAVTA will provide to DISTRICT the advertising benefit relating to the Wheels buses as described in Attachment A attached hereto.
6. FEES AND PAYMENT SCHEDULE - In consideration for LAVTA participating in the SAV project and for providing to DISTRICT the advertising benefit as described in Attachment A, DISTRICT shall pay LAVTA the amounts described in Attachment B hereto according to the payment schedule described in Attachment B hereto.
7. NON-EXCLUSIVITY - DISTRICT expressly acknowledges that LAVTA may have other sponsors whose advertising or brands are displayed in connection with LAVTA. DISTRICT expressly agrees that it is not granted any exclusive rights that would in any manner limit the rights of LAVTA to seek other sponsors and to display advertising or brands of those sponsors, except as may be expressly set forth in Attachment A hereto. To the extent that any right of exclusivity has been granted, the express terms of that right are described in Attachment A hereto.
8. DELIVERY OF PROMOTIONAL MATERIALS - DISTRICT shall be responsible for delivering its advertising materials to LAVTA.
9. PARTIES' TRADEMARKS - Each party shall be entitled, from time to time, to make reasonable use of the other party's name, trade name, trademarks and logos in connection with advertising or promotional materials; provided, however, that a party shall do so only with the prior written approval of the other party, which approval shall not be unreasonably withheld.

10. INDEMNIFICATION

- A. LAVTA shall indemnify and hold harmless DISTRICT, and DISTRICT's officers, employees and agents, from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages, arising out of the performance of this Contract; but only in proportion to and to the extent such liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of LAVTA or its officers, agents, or employees.
- B. DISTRICT shall indemnify and hold harmless LAVTA, and LAVTA's officers, employees and agents, from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages, arising out of the performance of this Contract; but only in proportion to and to the extent such liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of DISTRICT or its officers, agents, or employees.

11. INSURANCE

- A. LAVTA shall maintain the following Wheels buses Insurance:
 - i) Workers' compensation and employers' liability insurance as required by California law or other applicable statutory requirements for any persons employed by LAVTA for the Event.
 - ii) Occurrence-based commercial general liability insurance or equivalent form with a limit of not less than five million dollars (\$5,000,000) each occurrence with a general aggregate liability of not less than ten million dollars (\$10,000,000). Such insurance shall include DISTRICT and its officers, agents, and employees as additional insureds and shall be primary with respect to any insurance maintained by DISTRICT.
 - iii) Business automobile liability insurance or equivalent form with a limit of not less than five million dollars (\$5,000,000) each occurrence, with a general aggregate liability of not less than ten million dollars (\$10,000,000) if policy includes an aggregate, covering each vehicle used by LAVTA in connection with the Event. Such insurance shall include coverage for owned, hired, and non-owned vehicles. Such insurance shall include DISTRICT and its officers, agents, and employees as additional insureds and shall be primary with respect to any insurance maintained by DISTRICT.
 - iv) DISTRICT shall be named as additional insured under the business automobile liability. LAVTA shall furnish properly-executed certificates of insurance for all required insurance. LAVTA shall notify DISTRICT in writing fifteen (15) days prior to cancellation or modification of any required insurance policy. Any such modifications are subject to pre-approval by DISTRICT.

12. NOTICES - All notices that are required under this Contract shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed

to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. Pacific Time. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five (5) business days after the date of mailing.

DISTRICT: Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
Attn: Chengfeng Wang

LAVTA: LAVTA
1362 Rutan Drive, Suite 100
Livermore, CA 94551
Attn: Christy Wegener

13. ADDITIONAL PROVISIONS - All attachment(s) to this Contract are expressly incorporated herein by this reference and made a part hereof as though fully set forth.
14. RELATIONSHIP OF THE PARTIES - Nothing contained herein shall imply any partnership, joint venture or agency relationship between the parties and neither party shall have the power to obligate or bind the other in any manner whatsoever, except to the extent herein provided.
15. ASSIGNMENT - No party shall assign, sell, license, or otherwise transfer any rights or obligations under this Contract to a third party without the prior written consent of the other party, and any attempt to do so shall be void upon inception.
16. WAIVER - No waiver of a breach, of failure of any condition, or of any right or remedy contained in or granted by the provisions of this Contract shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies. Further, the failure of a party to enforce performance by the other party of any term, covenant, or condition of this Contract, and the failure of a party to exercise any rights or remedies hereunder, shall not be deemed a waiver or relinquishment by that party to enforce future performance of any such terms, covenants, or conditions, or to exercise any future rights or remedies.
17. FORCE MAJEURE - Neither DISTRICT nor LAVTA shall be liable for or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, governmental controls, regulations or restrictions, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of the services, or other causes, except financial, that are beyond the reasonable control of DISTRICT or LAVTA, for a period of time equal to the period of such force majeure event, provided that the party

failing to perform notifies the other party within fifteen calendar days of discovery of the force majeure event, and provided further that that party takes all reasonable action to mitigate the damages resulting from the failure to perform. Notwithstanding the above, if the cause of the force majeure event is due to party's own action or inaction, then such cause shall not excuse that party from performance under this Contract.

18. SEVERABILITY - If a court of competent jurisdiction holds any provision of this Contract to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them will not be affected.
19. HEADINGS - Headings on the sections and paragraphs of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of, the provisions of this Contract.
20. DUPLICATE EXECUTION - This Contract may be executed in separate, duplicate counterparts. Each signed counterpart shall have the force and effect of an original, and all such counterparts together shall constitute one and the same instrument.
21. GOVERNING LAW - Any dispute that arises under or relates to this Contract shall be governed by California law, excluding any laws that direct the application to another jurisdiction's laws. Venue for resolution of any dispute that arises under or relates to this Contract, including mediation, shall be San Francisco, California.
22. ENTIRE AGREEMENT AND MODIFICATION - This Contract represents the final, complete, and exclusive statement of the agreement between the parties, and it supersedes all prior and contemporaneous understandings and agreements of the parties. No party has been induced to enter into this Contract by, nor is any party relying upon, any representation or warranty outside those expressly set forth herein. This Contract may be amended only by mutual agreement of the parties in writing and signed by both parties.

IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

LIVERMORE AMADOR VALLEY
TRANSIT AUTHORITY

By: _____
Jack P. Broadbent
Executive Officer/APCO

By: _____
Michael S. Tree
Executive Director

Date: _____

Date: _____

Approved as to form:

Approved as to form and legality:

By: _____
Brian C. Bunger
District Counsel

By: _____
Michael Conneran
General Counsel

ATTACHMENT A

SCOPE OF WORK

LAVTA shall use the TFCA revenues received to support its participation in the EasyMile project including testing of one or more SAVs in Dublin, CA by the end of 2019 and deployment of two SAVs for passenger service by January 31, 2020. In exchange for DISTRICT'S funding, LAVTA shall allow DISTRICT to "wrap" the seven Wheels buses approved by DISTRICT for full 'Spare the Air' printed advertisements and to maintain the wrapping for a minimum of 36 months.

DISTRICT staff shall work with LAVTA to develop wrap designs that emphasize the Spare the Air message and that are agreed upon by both parties. DISTRICT or its designees will be responsible for cost, design, printing and installation of the 'Spare the Air' printed wrapping, as well as the removal of these wraps on the sponsored buses after the sponsorship has concluded, unless the Contract is terminated in accordance to the provisions set forth in section 4, 'Termination'. LAVTA remains the owner and operator of the buses and is responsible for them. LAVTA shall allow, and cooperate with the DISTRICT to help facilitate, these processes.

LAVTA shall keep wrapped buses with the Spare the Air printed advertisements in service whenever possible and maintenance should be coordinated to keep wrapped buses operating as often as possible. DISTRICT acknowledges that occasionally wrapped buses may be temporarily replaced by a regular unwrapped bus due to an accident, maintenance, repair, or other such circumstances. LAVTA shall not use non-wrapped replacement buses more than 5% of scheduled service hours per quarter in aggregate. If this maximum limit is exceeded in any quarter, LAVTA shall notify DISTRICT and DISTRICT may choose to reduce, or prorate, future payments proportionally based on the number of days/service hours wrapped buses were removed from service. If the number of wrapped buses is permanently reduced during the term, the DISTRICT will proportionally reduce its quarterly payment to LAVTA. If any new or replacement vehicles are placed on the route during the term of this Contract, LAVTA is responsible for all costs associated with providing an equivalent wrap on any replacement vehicle(s).

LAVTA shall implement the SAV project, complete all the milestones, and meet the project schedule specified below:

<u>Milestone</u>	<u>Due Date</u>
Complete acquisition (purchase or lease) of one or more SAVs	By January 31, 2018
Complete pre-testing of SAVs at GoMentum and complete testing site preparation in Dublin, CA	By February 28, 2018
Complete testing in Dublin, CA	By December 31, 2019
Deploy two SAVs for passenger service in Dublin, CA and provide service for a minimum of 12 months	By January 31, 2020

If for any reason, LAVTA elects to end its testing or deployment of SAVs prior to the end of the project term, LAVTA agrees to immediately notify District and further agrees that all remaining funding not paid to LAVTA per this Contract will cease.

LAVTA shall use year 1 revenue to help support LAVTA's participation in the EasyMile partnership that is being led by Contra Costa Transportation Authority and would allow LAVTA to share in the existing SAV testing that is currently underway.

In year 2, LAVTA shall use the revenue to continue the testing of SAVs.

In year 3 LAVTA shall use the revenue to finalize the testing of SAVs and to deploy two SAVs for passenger service in Dublin, CA.

LAVTA shall submit a SAV Project Progress Report to the DISTRICT on a DISTRICT approved form along with invoices on a quarterly basis.

LAVTA agrees to provide at least 12 months of operational data regarding the SAVs deployed in passenger service, which may be collected within one year after the term of this Contract.

LAVTA shall acknowledge the DISTRICT as a funding source and will use or display the DISTRICT-approved logo as follows:

1. On any SAVs, or on any other vehicles or equipment purchased or leased with TFCA funds.
2. On any printed or electronic material associated with the SAV project that is distributed to the public. Printed materials include brochures, handbooks, or promotional material. Electronic materials include related web sites, electric signs, or e-mail broadcasts.
3. In any related media events, articles, news releases or other publicity materials.

ATTACHMENT B

PAYMENT SCHEDULE

The DISTRICT shall pay LAVTA a maximum of \$966,000, which shall be paid in increments of \$80,500 on a quarterly basis. LAVTA may submit to the DISTRICT a request for reimbursement for \$80,500 each quarter, in accordance with the payment schedule shown below. Within 30 days following the DISTRICT's approval of LAVTA's submitted invoices and SAV Project Progress Reports, which are specified in Attachment A, the DISTRICT shall make its payment to LAVTA.

First date a quarterly invoice may be submitted:

For period covering:

Upon Execution of the Contract	Contract execution – March 31, 2018
July 1, 2018	April 1 - June 30, 2018
October 1, 2018	July 1 - September 30, 2018
January 1, 2019	October 1 - December 31, 2018
April 1, 2019	January 1 - March 31, 2019
July 1, 2019	April 1 - June 30, 2019
October 1, 2019	July 1 - September 30, 2019
January 1, 2020	October 1 - December 31, 2019
April 1, 2020	January 1 - March 31, 2020
July 1, 2020	April 1 - June 30, 2020
October 1, 2020	July 1 - September 30, 2020
January 1, 2021	October 1 - December 31, 2020

RESOLUTION NO. 36-2017

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY
EXECUTING A FUNDING AGREEMENT WITH THE BAY AREA AIR
QUALITY MANAGEMENT DISTRICT FOR SPARE THE AIR BUS
ADVERTISING IN SUPPORT OF LAVTA'S SHARED AUTOMOUS VEHICLE
PILOT**

WHEREAS, the Livermore Amador Valley Transit Authority has identified a need for testing innovative first/last mile solutions for connectivity to BART that will reduce greenhouse gas (GHG) emissions; and

WHEREAS, current testing of Shared Autonomous Vehicles (SAV) is underway in San Ramon within the Bishop Ranch Business Park through the GoMentum Station partnership; and

WHEREAS, LAVTA seeks to build upon the testing currently underway at Bishop Ranch with an SAV pilot in the City of Dublin; and

WHEREAS, LAVTA worked with the Bay Area Air Quality Management District (BAAQMD) on a funding plan for "Spare the Air" bus advertising on seven of LAVTA's fixed route buses; and

WHEREAS, the BAAQMD Board of Directors approved securing a bus advertising service contract with LAVTA at their October 19, 2016 meeting; and

WHEREAS, staff at LAVTA and the BAAQMD have finalized the bus advertising service contract that outlines the bus advertising project and how the funds will be utilized to advance the SAV pilot in Dublin.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Livermore/Amador Valley Transit Authority that the Executive Director may enter into a funding contract with the BAAQMD for the wrapping of seven of LAVTA's buses in Spare the Air advertising for a period of up to three years in exchange for \$322,000 in revenue per year to support LAVTA's SAV project.

PASSED AND ADOPTED this 4th day of December 2017

Karla Brown, Chair

ATTEST:

Michael Tree, Executive Director

APPROVED AS TO FORM:

Michael Conneran, Legal Counsel