

**LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY
(LAVTA)**

**REQUEST FOR PROPOSALS
FOR
ON-CALL ENGINEERING CONSULTING
SERVICES #2021-04**

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

November 15, 2021

Key RFP Dates

Date of Issuance:	November 15, 2021
Pre-proposal Conference:	November 30, 2021 at 10:00 a.m.
Written Questions/Requests Due:	December 2, 2021 at 4:00 p.m.
Responses to Questions/ Requests:	December 7, 2021
Proposals Due:	December 17, 2021 at 2:00 p.m.
Demonstrations and Presentations (estimated):	January 11-12, 2022
Contract Award (estimated):	February 7, 2022
Contract Execution (estimated):	February 14, 2022

Contact Information:
Jennifer Yeamans, Senior Grants & Management Specialist
(925) 455-7555
procurements@lavta.org

November 15, 2021

**SUBJECT: NOTICE OF REQUEST FOR PROPOSALS
ON-CALL ENGINEERING CONSULTING SERVICES #2021-04**

The Livermore Amador Valley Transit Authority (LAVTA), operator of the Wheels bus system, is soliciting proposals from qualified firms to provide on-call architecture and engineering consulting services for various LAVTA projects.

Prospective Proposers are encouraged to attend a virtual pre-proposal meeting to be held on November 30, 2021, at 10:00 a.m. PST via Zoom to discuss the procurement schedule and process, contract requirements, and information regarding Scope of Work and schedule. LAVTA will answer any questions or requests for clarification on any item in the RFP. Proposers are advised that any exchange with LAVTA in response to Proposers' questions does not amend/alter or modify the RFP. Any revision to the RFP will be accomplished by written Addendum/Addenda. Participation in the virtual pre-proposal conference is not mandatory. However, all prospective Proposers are encouraged to attend. To register and participate in the virtual pre-proposal conference using Zoom Web App, please visit:

<https://us02web.zoom.us/meeting/register/tZYkce2oqjsG9EeZxB8igYxMO40NK3IDSZU>.

All Questions and Requests for Clarification must be submitted in writing by December 2, 2021, at 4:00 p.m. PST. Proposals must be received via the Bid Express website by 2:00 p.m. PST on December 17, 2021. **No proposals will be accepted after this time and date.** Proposers shall submit electronic copies of their separate Technical and Cost Proposals as described in the RFP documents to Bid Express at: <https://www.bidexpress.com/businesses/40032/home>.

Any proposal or amendment to proposal received by any means other than via the Bid Express website will be returned unopened to the sender. Submission of a proposal shall constitute a firm offer to LAVTA. No Proposer may withdraw its proposal for a period of one hundred twenty (120) days after the proposal due date. Each Proposer will be notified of award of contract, if award is made. LAVTA reserves the right to reject any and all proposals, to waive any irregularities or informalities in any proposal or in the proposal procedure, to modify the solicitation schedule, and postpone the proposal opening for its own convenience. LAVTA specifically reserves the right to not award a contract after the submittal of proposals.

Following the initial review and screening of timely-submitted proposals, one or more firms may be invited to attend an interview and give a presentation of their proposal to LAVTA on or around January 11-12, 2022 (estimated date). Staff the Proposer intends to assign to the project, if awarded a contract, must be present at the interview/presentation. LAVTA's request for an interview/presentation does not constitute acceptance of a proposal.

The contract awarded under this Request for Proposals (RFP) may be funded in whole or in part by the Federal Transit Administration (FTA), Federal Highway Administration (FHWA), and/or California Department of Transportation (Caltrans). Full compliance with all applicable local, state and federal laws and regulations, including applicable Safety and Health Standards, Equal Employment Opportunity, and Americans with Disabilities Act laws and regulations will be required of the successful Proposer.

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

LAVTA intends for this procurement to be primarily conducted electronically via the Bid Express Website at <https://www.bidexpress.com/businesses/40032/home>; however, upon request, copies of the RFP may be obtained by contacting LAVTA at (925) 455-7555.

/s/ Tamara Edwards

Tamara Edwards
Director of Finance
Livermore Amador Valley Transit Authority

November 15, 2021

Date

SECTION I

INSTRUCTIONS TO PROPOSERS

1.0 INSTRUCTIONS TO PROPOSERS

1.1 Examination of Proposal Documents

The work to be performed under this contract consists of the furnishing of all labor, insurance, materials, and equipment necessary to perform the requirements specified in the Scope of Work. By submitting a proposal, Proposer represents that it has thoroughly examined and become familiar with the work required under this RFP and that it is capable of performing quality work to achieve the Livermore Amador Valley Transit Authority's ("Authority" or "LAVTA") objectives.

1.2 Addenda

Any Authority changes to the requirements will be made by written addendum to this RFP. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any resulting Agreement. The Authority will not be bound to any modifications to or deviations from the requirements set forth in this RFP as the result of oral instructions. Proposers shall acknowledge receipt of addenda in their proposals.

1.3 Authority Contact

All questions and/or contacts with LAVTA staff regarding this RFP are to be directed to the Contract Administrator:

Jennifer Yeamans, Senior Grants & Management Specialist
Livermore Amador Valley Transit Authority
1362 Rutan Court, Suite 100
Livermore, CA 94551
Phone: (925) 455-7555
Email: procurements@lavta.org

1.4 Pre-Proposal Conference

LAVTA will hold a pre-proposal meeting on November 30, 2021, at 10:00 a.m. PST via Zoom for the purpose of responding to reasonable questions pertaining to the project and proposal content. All interested Proposers are strongly encouraged to attend. Any questions that require modification to the meaning or intent of the RFP must be submitted in writing as described below. Oral statements, interpretations, or modifications are not binding on LAVTA. To register and participate in the virtual pre-proposal conference using Zoom Web App, please visit:

<https://us02web.zoom.us/join/zoom/register/tZYkce2oqjs0G9EeZxB8igYxMO40NK3IDSZU>.

1.5 Questions and Requests for Clarification

Should a Proposer have questions concerning or require clarifications of this RFP, the Proposer shall submit those questions via the Bid Express "Questions" link. Should it be

found that the point in question is not clearly and fully set forth, the Authority will issue a written addendum clarifying the matter, which will be posted on Bid Express. All questions and/or requests for clarification must be submitted via Bid Express no later than 4:00 p.m. PST on December 2, 2021.

1.6 Authority Responses

Responses from the Authority will be posted on the Authority's website, www.wheelsbus.com and on the Bid Express website by December 7, 2021. LAVTA reserves the right to postpone this deadline for its own convenience.

1.7 Submission of Proposals

Date and Time - Proposals must be submitted at or before 2:00 p.m. PST on December 17, 2021, at <https://www.bidexpress.com/businesses/40032/home>.

1.8 Acceptance of Proposals

- (a) The Authority reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals or proposal procedures.
- (b) The Authority reserves the right to withdraw or cancel this RFP at any time without prior notice and the Authority makes no representations that any contract will be awarded to any Proposer responding to this RFP.
- (c) The Authority reserves the right to modify the solicitation schedule and to postpone proposal openings for its own convenience.
- (d) The Authority reserves the right to request additional information to clarify any proposal.

1.9 Pre-Contractual Expenses

The Authority shall not, in any event, be liable for any pre-contractual expenses incurred by Proposer in the preparation of its proposal. Proposer shall not include any such expenses as part of its proposal.

Pre-contractual expenses are defined as expenses incurred by Proposer in:

- 1. Preparing its proposal in response to this RFP;
- 2. Submitting that proposal to the Authority;
- 3. Negotiating with the Authority on any matter related to this proposal; or
- 4. Any other expenses incurred by Proposer prior to date of contract award, if any.

1.10 Joint Offers

Where two or more firms desire to submit a single proposal in response to this RFP, they should do so on a prime-subcontractor basis rather than as a joint venture. The Authority intends to contract with a single firm rather than with multiple firms doing business as a joint venture.

1.12 Protest Procedures

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

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

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

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

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

1.13 Contract Type

It is anticipated that the Agreement(s) resulting from this solicitation, if awarded, will be a time and expense contract specifying hourly rates, which will apply on a Task Order basis. At LAVTA's discretion, each Task Order will be compensated at either a firm-fixed-price (FFP) or cost-plus-fixed-fee (CPFF) basis.

SECTION II

SCOPE OF WORK

SCOPE OF WORK

ON-CALL ENGINEERING CONSULTING SERVICES

1. INTRODUCTION

1.1. Request for Proposals

The Livermore Amador Valley Transit Authority (LAVTA) seeks the services of a qualified firm capable of providing on-call multi discipline engineering, design, architectural, and construction management support services for various projects associated with LAVTA's facilities in Dublin, Pleasanton, Livermore, and areas of unincorporated Alameda County.

Respondents to this RFP must be able to provide all of the desired services for each of the items listed in the scope of work. LAVTA intends to award the on-call service contract to one firm, but reserves the right to award to multiple firms. There is no guarantee of work through this solicitation.

The contract awarded under this RFP may be funded in whole or in part by the Federal Transit Administration (FTA), Federal Highway Administration (FHWA), and California Department of Transportation (Caltrans). The successful Proposer shall cooperate with the Authority to ensure the full conformance with its funding agreements with the FTA, FHWA, and Caltrans, and shall comply with all terms and conditions prescribed for third-party contracts by the FTA, FHWA, and Caltrans.

1.2. Scope of Work

Background

LAVTA, which operates the *Wheels* system, provides fixed-route bus service and Dial-A-Ride paratransit service to ADA-eligible citizens in the cities of Dublin, Livermore, and Pleasanton, and adjacent unincorporated areas of Alameda County.

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

Engineering services will be provided on an as-needed basis, through the on-call Task Order process described below.

LAVTA's Director of Operations and Innovation will be the key contact for the Consultant and will direct the Consultant. The Consultant shall designate a point-of-contact (POC) within the firm to coordinate all activities. The POC will be permanently assigned in this capacity for the duration of the contract period. The POC shall have the authority to make commitments and decisions that are binding on the Consultant.

Any changes to Consultant's personnel under this project shall be subject to LAVTA's written approval.

Task Order Process

Task Orders will be initiated in accordance with the following procedure:

- LAVTA's Planning Director will issue a Task Order Proposal Request to Consultant, which will define the Scope of Work, deliverables, and required schedule.
- Task Orders will be issued on a firm-fixed-price or cost plus fixed fee with ceiling compensation basis.
- Consultant will submit its Task Order Proposal to LAVTA's Director of Operations and Innovation within ten (10) days of receipt of the Task Order Proposal Request. The Task Order Proposal shall include the Consultant's understanding of the Scope of Work, deliverables, schedule, and cost proposal. Also included will be the names of the Consultant (and subconsultant) personnel proposed under the Task Order. The cost proposal must be based on the rates established in the Agreement.
- LAVTA will review the Task Order Proposal for compliance with contractual requirements and will conduct a technical evaluation to ensure the Task Order Proposal is complete and is consistent with the Scope of Work, that personnel assigned are acceptable and that all costs proposed are appropriate.
- If required, LAVTA will conduct negotiations to address exceptions and costs identified in the Task Order Proposal. After negotiations, Consultant will submit a revised Task Order Proposal within ten (10) days.
- LAVTA reserves the right to issue a Task Order Proposal Request to one or more consultants. Award of federally-funded task orders, pursuant to the Brooks Act, will be competed amongst the bench of consultants, and will be awarded on a qualifications based selection process (QBS), with task order cost being negotiated with the highest-ranked proposer based on the QBS process. In the event LAVTA issues a Task Order Proposal Request to more than one consultant, task order award will be based on the technical superiority of a Consultant's proposal in response to the Task Order Proposal Request.
- LAVTA will issue a Task Order and a written Notice to Proceed for accepted Task Order Proposals.
- Services shall be performed under the direction of LAVTA's staff representative identified in the Task Order.
- Services are to be provided on an as needed basis throughout the term of the contract and services must be completed within the period specified in the Task Order. Performance of Task Orders must be completed within the term of the Agreement.

- Organizational conflicts of interest, if any, will be assessed at the Task Order level. Consultant shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under Task Orders. It is the Consultant's responsibility to assure that no organizational conflicts of interest exist. If the Consultant has a conflict of interest, real or apparent; it will not be allowed to provide services for those projects.
- Task Order may be modified by a written amendment to the Task Order signed by LAVTA and the Consultant.
- Additional DBE requirements may apply if LAVTA determines a contract-specific goal may apply to the procurement.

General

The Consultant shall function with overall guidance from LAVTA staff, but will manage and control the day-to-day work directive activities and deliverables.

Services: Professional services to be provided by Consultant under the Agreement and individual Task Orders may include, but not be limited to, the following tasks and activities:

1. Civil/site improvement designs (e.g., bus stop design and ADA improvements)
2. Mechanical design (e.g., plumbing, HVAC)
3. Electrical design (interior and exterior)
4. Architectural/space planning
5. Structural design and analysis
6. Constructability/biddability reviews
7. Project cost estimating

List of Potential Task Order Assignments

Possible tasks that may be required of the Consultant in executing Task Order assignments include:

- Preparation and delivery of feasibility/cost studies
- Preparation of conceptual engineering and project study reports
- Preparation of Plans, Specifications and Cost Estimates (PS&E)
- Project Controls activities, including cost estimate preparation and review, and schedule preparation and review
- Construction Management support services
- Review of contractor submittals
- Evaluation of contractor's claims and dispute resolution assistance

Detailed Scope of Services for Consultant

As assigned by individual Task Orders, Consultant will conduct categories of services as described below:

- **Civil/site improvement designs (e.g., bus stop design and ADA improvements)** - Typical civil site work will involve designs associated with bus stop and ADA design improvements in city right-of-way.
- **Mechanical design (e.g., plumbing, HVAC)** - Mechanical design at LAVTA's maintenance, operations, and administrative office building may involve design of plumbing, HVAC, and other mechanical systems.
- **Electrical design** - Electrical design for the bus stop facilities and LAVTA administrative office building may involve design of lighting, communications systems, fire alarm and other electrical systems.
- **Architectural/space planning** - Architectural and space planning at the administrative office building may involve assessments of current space needs and recommendations for modernizing and upgrading facilities to improve functionality, space efficiency, and ease of use.
- **Structural design and analysis** - Structural analysis may be needed to determine structural integrity in the installation of auxiliary equipment on buildings, in reconfiguring building spaces, and in retrofitting bus stop shelters and signs to include solar and real-time displays. A recent example involved a structural analysis needed for the installation of real-time signs on existing bus shelters.
- **Constructability/Biddability Reviews** - In conjunction with design of equipment or facilities, constructability/biddability reviews may be required to ensure the design provides for ease and efficiency in construction and that the design would not discourage or preclude qualified contractors from bidding.
- **Project Cost Estimating** - Project cost estimating will be required in conjunction with design of equipment or facilities. These services may also be needed for feasibility analyses.

Example of Possible Forthcoming Work

LAVTA is in the process of securing funding for bus stop improvements. The award date is unknown at this time. Consultant activities associated with bus stop improvements will include design of bus stop shelter pads, ADA sidewalk improvements, and attachment and electrical design of solar panels and real-time signs at locations in the public right-of-way throughout Livermore, Dublin, Pleasanton, and unincorporated areas of Alameda County. The Consultant would be asked to provide these services and coordinate plan approval and permits through the cities. LAVTA would pay any required fees directly to the cities.

In addition, once plans are approved, the Consultant will be requested to assist in creating bid documents, plans, and specifications to hire a construction contractor to complete the construction work. The Consultant may also be asked to provide construction support services during construction.

Other planned and potential near-term projects are identified in LAVTA's FY2021 – FY2025 Capital Improvement Plan, as adopted by the LAVTA Board of Directors in March 2021.

2. ADDITIONAL REQUIREMENTS

2.1. Insurance

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 \$5 million per claim or occurrence and \$5 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.

2.2. Confidentiality

The California Public Records Act (California Government Code Sections 6250 et seq.) mandates public access to government records. Therefore, unless the information is exempt from disclosure by law, the content of any request for explanation, exception or substitution, response to these specifications, protest or any other written communication between Authority and the proposer shall be available to the public.

If the proposer believes any communication contains trade secrets or other proprietary information that the proposer believes would cause substantial injury to the proposer's competitive position if disclosed, the proposer shall request that Authority withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. **The proposer may not designate its entire proposal or bid as confidential. Additionally, proposer may not designate its cost proposal or any required proposal forms or certifications as confidential.**

If proposer requests that Authority withhold from disclosure information identified as confidential, and Authority complies with the proposer's request, proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless Authority from and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the proposer information), and pay any and all costs and expenses related to the withholding of proposer information.

Proposer shall not make a claim, sue, or maintain any legal action against Authority or its directors, officers, employees or agents in connection with the withholding from disclosure of proposer information.

If proposer does not request that Authority withhold from disclosure information identified as confidential, Authority shall have no obligation to withhold the information from disclosure and may release the information sought without any liability to Authority.

2.3. Conflict of Interest

Proposer represents and warrants that it presently has no interest, and agrees that it will not acquire any interest, which would present a conflict of interest under California Government Code §§ 1090 *et seq.* or §§ 87100 *et seq.* during the performance of services under the Agreement. Proposer shall promptly disclose any actual or potential conflict of interest to Authority as soon as proposer becomes aware of such conflict. Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of the Agreement. Violation of this provision may result in the Agreement being deemed void and unenforceable.

No member, officer, or employee of the Authority or of any of its member jurisdictions during his/her tenure of office, or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds therefrom.

SECTION III

PROPOSAL CONTENT

1 PROPOSAL CONTENT - TECHNICAL PROPOSAL

1.1 Format

The intent of this RFP is to encourage responses that clearly communicate the proposer's understanding of the scope of work and the proposer's approach to meet LAVTA's requirement for on-call engineering consulting services.

Proposals should be limited to specific discussion of the elements outlined in this RFP. Respondents are encouraged to avoid submissions that are poorly organized or in which important information is obscured by unnecessary promotional material. Short, succinct, and clear submittals are less likely to be marked down due to uncertainty as to meaning or misinterpretation. The Evaluation Committee will assume the most unfavorable interpretation when information is unclear, ambiguous, or missing. Respondents are encouraged to submit proposals that best address the evaluation criteria outlined in Section IV, Evaluation and Award, subsection 1.1.

The organization of each proposal should follow the general outline below. Proposals should not exceed fifty (50) pages in length, excluding any appendices. The page limit applies to Proposer's Qualifications, Experience and References, and Technical Proposal section. Examples of previous work product may be submitted in print, PowerPoint presentation, video or compact disc. All sample materials will be available for return at respondent's request.

Respondent's proposal shall include the following items in the following sequence:

1.2 Cover Form

The signed cover form, provided in Appendix A-1, contains the following:

- a) Date submitted and complete name and address of person who will receive correspondence and who is authorized to make decisions or represent the Proposer and contractually bind the firm. This person shall also sign the Price Proposal Form (which shall be submitted in a separate sealed envelope, marked "Confidential"). Identification shall include legal name of company, corporate address, telephone and fax number and contact person during period of proposal evaluation.
- b) An understanding of the conditions under which the proposal is offered.
- c) Acknowledgement of receipt of all RFP addenda, if any. A statement to the effect that the proposal shall remain valid for a period of not less than one hundred twenty (120) days from the date of submittal.

- d) An understanding that LAVTA reserves the right to reject any or all Proposals or to waive any informality or technicality in any proposal in the interest of LAVTA.
- e) A statement that Proposer is prepared to sign the Sample Agreement without alterations or exceptions or whether it is requesting modifications to the Sample Agreement and/or any requirements of this RFP. Proposers shall not just attach their own sample agreements as exceptions to LAVTA's Sample Agreement, but instead must include interlineated exceptions to LAVTA's Sample Agreement.
- f) A statement confirming the commitment of adequate resources to meet LAVTA's quality and schedule expectations.
- g) Signature of a person authorized to bind Proposer to the terms of the proposal.

1.3 Evidence of Ability to Provide Insurance

Provide evidence in the form of a certificate of insurance or letter from Proposer's broker/agent that verifies the firm is able to meet the minimum insurance requirements as detailed in Section II – Scope of Work, subsection 2.1 including, workers' compensation insurance, commercial general liability insurance, automobile liability insurance and professional liability insurance.

1.4 Proposer's Qualifications, Experience, and References

The following information shall be included:

- a) Summary - A brief description of the Proposer's qualifications for furnishing the engineering consulting services, including the organization name, size and years in business.
- b) Firm Experience – This section should contain a concise description of the proposer's background and experience in providing multi-discipline engineering, design, architectural, and construction management support services to the public transit sector similar to those outlined in the Scope of Work, listing at least three projects within the last three years (not including any projects completed for LAVTA). The information submitted should include:
 - Name, address, and telephone number of the responsible official of the organization
 - Cost of the contract
 - Dates services encompass
 - Services provided
 - The status of the contract

This section should provide examples of work on similar projects, including project scope, objectives and success or failure to achieve those goals. Projects in both the private and public sectors may be included.

- c) Experience of Key Personnel - Identify your proposed Project Manager, and other key personnel who will provide direct services to LAVTA, including such person's relevant job histories, professional credentials, if any, and related experience, especially in, but not limited to, working with public sector clients.
- d) Financial Stability and History of the Proposer - Provide a statement of your firm's financial strength, stability, capacity, and resources. Company official reports and other similar materials (balance sheet and income statements, with 3-year summary history) should be provided. Provide information about the history of the firm, demonstrating viability of the firm.
 - Identify any past (within last 3 years) or pending litigation against the Proposer alleging failure to perform in accordance with contractual obligations, and describe present status. If there is no such litigation, this must be explicitly stated.
 - List any projects, which have resulted in time extensions and/or the assessment of liquidated damages against any member of the project team during the last five (5) years.

1.5 Approach to Scope of Services

On-Call Engineering Consulting Services - The following shall be included as a description of the proposed services to be provided by the Proposer under this contract:

- a) Demonstrate the Firm's approach to quality control, project management, and product delivery.
- b) Conformance to the terms of the requirements of the RFP – The Proposer should describe if they can meet all the requirements of the RFP. Any deviation with the RFP requirements should be clearly identified and described. Failure to specify any exceptions or objection to the requirements, and terms and conditions of this RFP will constitute acceptance of LAVTA's requirements.
- c) Identification of any parts of the proposal the proposer considers proprietary and a written justification for the claim.

1.6 Supporting Documentation

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

1.7 Completed Required Forms (Provided in Appendix A)

- Appendix A-3: Certification Regarding Worker Compensation
- Appendix A-4: Fair Employment Practice Certification
- Appendix A-5: Certification Concerning Control of Employee
- Appendix A-6: Lobbying Certification

Note: Proposers do not need to complete or submit the forms included with Appendix A-8 relating to the federal Disadvantaged Business Enterprise (DBE) Program, which may be applied to projects involving federal funds at a later time. They have been included in Appendix A for reference and informational purposes only.

2 PROPOSAL CONTENT - COST PROPOSAL

Proposer's Cost Proposal form provided in Appendix A-2 will be automatically sealed by Bid Express upon submission and will not be a factor in the evaluation.

All Cost Proposal responses must include and address all of the sections listed below.

1. Consultant's Direct Labor Costs – Proposers shall include individual positions and include hourly rates for each individual using the format contained in Appendix A-2, Consultant Actual Direct Hourly Rates. The hourly rates shall be exclusive of any burden or markups. Proposers shall provide the same data for all proposed subconsultants, if any.
2. Consultant's Indirect Cost Rates (overhead) – Proposer shall submit Indirect Cost Rates for home office and dedicated field office using the format contained in Appendix A-2, Consultant Multiplier and Fee. In each case, Proposer shall identify cost elements contained within overhead rate pool. If it is Proposer's normal practice to show employee fringe benefits as a separate overhead rate on direct labor, then such practice shall be incorporated in the rates submitted.
3. Maximum Proposed Fee – Proposer shall submit a proposed maximum fee (profit) as a percentage of the overhead burdened Direct Cost for Labor using the format contained in Appendix A-2, Consultant Multiplier and Fee. The Consultant's maximum fee, as a percentage of fully burdened Direct Labor Cost, allowable by LAVTA shall not exceed 6%.
4. Consultant's Most Recent Audit Report – Proposer shall submit a copy of its most recent audit report (not older than 18 months) of Proposer's direct and indirect rates and shall state whether rates are consistent with Federal Cost Principles (Title 48, Code of Federal Regulations, Part 31). Audit shall have been conducted by the Federal Government, a Certified Public Accountant, or Independent Auditor. Identify the audit agency, contact name, phone number, and furnish copies of findings.

Proposers must also submit with their Cost Proposal Form:

1. Caltrans Cognizant Letter of Approval. Proposers are directed to Appendix B, Caltrans A&E Consultant Audit and Review Process for standards and procedures applicable to A&E consultant costs. Submit a copy of the Caltrans Cognizant Letter of Approval in accordance with Appendix B.
2. Exhibit 10-K Consultant Annual Certification of Indirect Costs and Financial Management System, provided in Appendix A-7.

Respondent is expected to examine this RFP carefully, understand the terms and conditions for providing the products herein and respond completely. **FAILURE TO COMPLETE AND PROVIDE ANY OF THE ABOVE ITEMS MAY RESULT IN THE RESPONDENT'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.**

SECTION IV
EVALUATION AND AWARD

1 EVALUATION AND AWARD

1.1 Evaluation Criteria

The Authority intends to award a Contract to the most qualified, responsible firm submitting a responsive Technical Proposal. The Authority will evaluate the Technical Proposals received based on the following criteria:

Evaluation Criteria	Scoring
Complete and thorough conformance with the terms and requirements of this RFP (In your submittal, state if you have any exceptions to the requirements.)	Pass/Fail
Proposer's Qualifications and Experience: Firm's ability to provide multi discipline engineering, design, architectural and construction management support services	40 points
Staffing and Project Organization: Strengths, experience and qualifications of key personnel, particularly the Project Manager. Previous public transportation experience including on-call contract work.	35 points
Approach to Scope of Services: Firm's approach to quality control, project management and product delivery.	15 points
Overall Completeness and Quality of Proposal: Proposer understands LAVTA's requirements as demonstrated by a comprehensive response to this RFP.	10 points
Total Points	100 points

1.2 Evaluation Procedure

To be considered for evaluation, all proposals must be responsive to this Request for Proposals with respect to required submissions and must be compliant with all provisions as documented. LAVTA may reject as nonresponsive any proposal not meeting the requirements of this RFP. An Evaluation Committee shall be comprised of Authority staff and may include outside personnel. The Committee members will evaluate the Technical Proposals using the criteria identified in Section 1.1 above.

Firms submitting a proposal to this RFP may be required to give a demonstration and presentation of their proposal to LAVTA. This presentation may provide an opportunity for the firms to clarify or elaborate on the proposal but will in no way change the original submission.

Staff the Proposer intends to assign to this contract, if selected, shall be present at the oral presentation. LAVTA's request for an oral presentation does not constitute acceptance of a proposal.

The Authority reserves the right to request additional information to clarify any Proposal.

Upon completion of the review of written submittals and interview, if any, the Authority shall rank each firm in accordance with the criteria above.

After the consultant ranking has been determined, the Authority will open the cost proposal from the highest-ranked firm only. LAVTA may accept the highest-ranked firm's Proposal, or negotiate the terms and conditions of the contract with the highest-ranked firm. If negotiations are unsuccessful, the Authority will terminate the negotiations, and may open negotiations with the next highest ranked firm. If negotiations with this firm are also unsuccessful, LAVTA may repeat the negotiations process with the next highest ranked firm, or may, at its sole discretion, reject all remaining proposals.

1.3 Award

The Authority reserves the right to award a contract for all tasks stated in the Scope of Services to one proposer or to award contracts for certain tasks stated in the Scope of Services among several proposers, as the Authority may deem to be in its best interest.

The Authority reserves the right to accept or reject any or all Proposals received as a result of this solicitation, to negotiate with any qualified firm, to modify or cancel in part or in its entirety the RFP, or to request revised Proposals if it is in the best interest of the Authority to do so. The Authority, however, may award a contract without negotiation, so Proposers are encouraged to submit their best offers and proposals.

1.4 Notification of Award

Proposers who submit a proposal in response to this RFP shall be notified by email regarding LAVTA's intent to award the contract

Appendix A – Proposal Forms

PROPOSAL COVER FORM
for
On-Call Engineering Consulting Services
RFP # 2021-04

Livermore Amador Valley Transit Authority (LAVTA)
Livermore, CA

DATE SUBMITTED:

NAME OF INDIVIDUAL SUBMITTING PROPOSAL:

CONTACT PERSON:

NAME UNDER WHICH BUSINESS IS CONDUCTED:

STREET ADDRESS:

MAILING ADDRESS, IF DIFFERENT:

TELEPHONE:

FAX:

BUSINESS LICENSE NUMBER:

CONDITIONS:

1. The undersigned understands that he/she will be bound by the Proposal as expressed by these forms if an award is made by LAVTA. The Contract will be in accordance with this Proposal.
2. The Request for Proposals, Required Forms, and Addenda, if any, are made a part of this Proposal.
3. The undersigned understands that any clarification made to the Proposal Form or any new and different conditions or information submitted in or with the Proposal Form, other than that requested, may render the Proposer unresponsive.

4. The undersigned acknowledges the receipt of the following Addenda:

5. The undersigned understands that all proposals shall remain in effect for one hundred twenty (120) days from the date of the submittal.
6. The undersigned understands that LAVTA reserves the right to reject any or all Proposals or to waive any informality or technicality in any proposal in the interest of LAVTA.
7. The undersigned certifies that the Proposal includes all costs for labor, materials, taxes, insurance, overhead, profits, and all other costs necessary to perform the work in accordance with the Contract Documents.
8. The undersigned will submit the proposal via Bid Express prior to 2:00 pm PST on December 17, 2021, at <https://www.bidexpress.com/businesses/40032/home>.
9. The undersigned is prepared to sign the Sample Agreement without alterations or exceptions or if it is requesting modifications to the Sample Agreement and/or any requirements of this RFP, shall include such requested modifications in its proposal.
10. The undersigned confirms the commitment of adequate resources to meet LAVTA's quality and schedule expectations.

SIGNED:

The undersigned certify that we sign this Proposal Cover Form with full and proper authorization to do so.

Signature, Printed Name, and Title

Signature, Printed Name, and Title

IF CORPORATION:

This Corporation is incorporated under the laws of the State of:

*If Contractor is a corporation, two corporate officers must sign on behalf of the corporation as follows: (1) Chairman of the Board, President, or Vice President; and (2) Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Financial Officer. In the alternative, this Contract may be executed by a single officer or a person other than an officer provided that evidence satisfactory to LAVTA is provided, demonstrating that such individual is authorized to bind the corporation (e.g., a copy of a certified resolution from the corporation's board or a copy of the corporation's by laws).

Cost Proposal Form Request for Proposal #2021-04

CONSULTANT ACTUAL DIRECT HOURLY RATES

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

Note: The Fixed Fee for each Task Order shall be negotiated on an individual basis as set forth in of the Agreement, Section 4, Compensation and Method of Payment.

CONSULTANT MULTIPLIER AND FEE

The Consultant's Multipliers and Fee shall be as shown below and are in accordance with the requirements of the Agreement, Section 4, Compensation and Method of Payment. The Consultant's maximum fee, as a percentage of fully burdened Direct Labor Cost, allowable by LAVTA shall not exceed 6%.

Payroll Burden _____%

Employee Benefits _____%

Overhead
(Home Office) _____%

Overhead
(Dedicated Field Office) _____%

Maximum Fee _____%

SIGNED: The undersigned certify that we sign this Price Proposal Form with full and proper authorization to do so.

Company Name

Signature, Printed Name, and Title

Signature, Printed Name, and Title

*If Contractor is a corporation, two corporate officers must sign on behalf of the corporation as follows: (1) Chairman of the Board, President, or Vice President; and (2) Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Financial Officer. In the alternative, this Contract may be executed by a single officer or a person other than an officer provided that evidence satisfactory to LAVTA is provided, demonstrating that such individual is authorized to bind the corporation (e.g., a copy of a certified resolution from the corporation's board or a copy of the corporation's by laws).

CERTIFICATION REGARDING WORKER COMPENSATION

Contract with the LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY, 1362 Rutan Court, Livermore, California 94551, for On-Call Engineering Consulting Services.

RFP # 2021-04

Labor Code Section 3700:

"Every employer except the state shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees."

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance. In accordance with the provisions of that code, I will comply with such provisions before commencing the performance of the work of this contract.

Dated: _____, 202__

(Proposer)

By _____

(Official Title)

(SEAL)

(Labor Code Section 1861, provides that the above certificate must be signed and filed by the Proposer with the Authority prior to performing any work under this contract.)

FAIR EMPLOYMENT PRACTICES CERTIFICATION

In connection with the performance of work under this contract, the Proposer agrees as follows:

1. The Proposer will not willfully discriminate against any employee or applicant for employment because of race, color, religious creed, ancestry, national origin, age, sex, physical disability, mental disabilities, marital status, or medical condition as defined in Government Code §12926. The Proposer will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religious creed, ancestry, national origin, age, sex, physical disability, mental disability, marital status, or medical condition as defined in Government Code §12926. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Proposer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Fair Employment Practices section.
2. The Proposer will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, advising the said labor union or workers' representative of the Proposer's commitments under this section; and the Proposer shall post copies of the notice in conspicuous places available to employees and applicants for employment.
3. The Proposer will permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the Fair Employment Practices Commission, LAVTA, or any other appropriate agency of the State of California designated by LAVTA for the purposes of investigation to ascertain compliance with the Fair Employment Practices section of this contract.
4. A finding of willful violation of the Fair Employment Practices section of this contract or of the Fair Employment Practices Act shall be regarded by LAVTA as a basis for determining the Proposer to be not a "responsible Proposer" as to future contracts for which such Proposer may submit Proposals, for revoking the Proposer's pre-qualification rating, if any, and for refusing to establish, re-establish, or renew a pre-qualification rating for the Proposer.

LAVTA shall deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the Proposer has violated the Fair Employment Practices Act and has issued an order under Government Code §12970 or obtained a court order under Government Code §12973.

Upon receipt of such written notice from the Fair Employment Practices Commission, LAVTA shall notify the Proposer that, unless it demonstrates to the satisfaction of LAVTA within a stated period that the violation has been corrected, the Proposer's pre-qualification rating will be revoked.
5. The Proposer agrees that should LAVTA determine that the Proposer has not complied with the Fair Employment Practices section of this contract then, pursuant to Labor Code Sections 1735 and 1775, the Proposer shall, as a penalty to LAVTA, forfeit, for each calendar day, or portion thereof, for each person who was denied employment as a result of such noncompliance, the penalties provided in the labor code for violation of prevailing wage rates. Such monies may be recovered from the Proposer. LAVTA may deduct any such damages from any monies due the Proposer.
6. Nothing contained in this Fair Employment Practices section shall be construed in any manner of fashion so as to prevent LAVTA from pursuing any other remedies that may be available at law.
7. Prior to award of the contract, the Proposer shall certify to LAVTA that it has or will meet the following standards for affirmative compliance, which shall be evaluated in each case by LAVTA:

a. The Proposer shall provide evidence, as required by LAVTA, that it has notified all supervisors, foremen and other personnel officers, in writing, of the content of the anti-discrimination clause and their responsibilities under it.

b. The Proposer shall provide evidence, as required by LAVTA, that it has notified all sources of employee's referral (including unions, employment agencies, advertisements, Employment Development Department) of the content of the anti-discrimination clause.

c. The Proposer shall file a basic compliance report as required by LAVTA. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also spell out the sources of the work force and who has the responsibility for determining whom to hire or whether or not to hire.

d. Personally, or through its representatives, the Proposer shall, through negotiations with the unions with whom it has agreements, attempt to develop an agreement which will:

(1) Spell out responsibilities for nondiscrimination in hiring, referral, upgrading, and training.

(2) Otherwise implement an affirmative anti-discrimination program in terms of the unions' specific areas of skill and geography to the end that qualified minority workers will be available and given an equal opportunity for employment.

e. The Proposer shall notify LAVTA of opposition to the anti-discrimination clause by individuals, firms, or organizations during the period of its pre-qualification.

8. The Proposer will include the provisions of the foregoing Paragraphs 1 through 7 in every first-tier subcontract so that such provisions will be binding upon each subconsultant.

9. Statements and Payrolls. The Proposer shall maintain its records in conformance with the requirements included in the Information to Proposers and the following Special Conditions:

a. The submission by the Proposer of payrolls or copies thereof, is not required. However, each Proposer and sub-contractor shall preserve their weekly payroll records for a period of three (3) years from the date of completion of this contract.

b. The payroll records shall contain the name, address and social security number of each employee, his/her correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made, and actual wages paid.

c. The Proposer shall make its payroll records available at the project site for inspection by LAVTA and shall permit LAVTA to interview employees during working hours on the job.

The following certification is to be executed by every Proposer and enclosed and forwarded in a sealed envelope containing the Proposal. The person signing the certification shall state his/her address and official capacity.

Fair Employment Practice Certification

The undersigned, in submitting a Proposal for performing work as specified in the Scope of Work hereby certifies that the Proposer will meet the above standards of affirmative compliance with the Fair Employment Practices Act.

PROPOSER

SIGNATURE

PRINTED NAME OF SIGNER

TITLE

MAILING ADDRESS

CITY

STATE

ZIP CODE

TELEPHONE NUMBER

DATE

**LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY
A CERTIFICATION CONCERNING CONTROL OF EMPLOYEE
OF CONTRACTOR**

The contractor, by entering into this Agreement with LAVTA to perform or provide work, services or materials to LAVTA, does hereby certify and assure that in performing the services under this Agreement, the Contractor shall act as an independent contractor and shall have full control of the work and Contractor's employees. Contractor and its employees, under no circumstances whatsoever, shall imply or be considered as an agent(s) or employee(s) of LAVTA. Contractor employees, under no circumstances, shall be entitled to part of any pension plan, insurance, bonus, or any similar benefits which LAVTA provides its own employees.

Any infraction of this Certification shall be cause for termination of this agreement.

Authorized Representative of Proposer

Signed

Title

Date

LOBBYING CERTIFICATION FOR CONTRACTS GRANTS, LOANS AND COOPERATIVE AGREEMENTS
(Pursuant to 49 CFR Part 20, Appendix A)

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions and as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Bidder, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Bidder understands and agrees that the provisions of 31 U.S.C. A 3801, et. seq. apply to this certification and disclosure, if any.

Signature of Authorized Official

Name and Title of Authorized Official

Date

17749096.2

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Reporting Entity: _____ Page _____ of _____

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

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

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

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

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

Local Assistance Procedures Manual

Exhibit 10-K

Consultant Annual Certification of Indirect Costs and Financial Management System

**EXHIBIT 10-K CONSULTANT ANNUAL CERTIFICATION OF
INDIRECT COSTS AND FINANCIAL MANAGEMENT SYSTEM**

(Note: If a Safe Harbor Indirect Cost Rate is approved, this form is not required.)

Consultant's Full Legal Name: _____

Important: Consultant means the individual or consultant providing engineering and design related services as a party of a contract with a recipient or sub-recipient of Federal assistance. Therefore, the Indirect Cost Rate(s) shall not be combined with its parent company or subsidiaries.

Indirect Cost Rate:

Combined Rate _____ % **OR**

Home Office Rate _____ % and Field Office Rate (if applicable) _____ %

Facilities Capital Cost of Money _____ % (if applicable)

Fiscal period * _____

* Fiscal period is annual one year applicable accounting period that the Indirect Cost Rate was developed (not the contract period). The Indirect Cost Rate is based on the consultant's one-year applicable accounting period for which financial statements are regularly prepared by the consultant.

I have reviewed the proposal to establish an Indirect Cost Rate(s) for the **fiscal period** as specified above and have determined to the best of my knowledge and belief that:

- All costs included in the cost proposal to establish the indirect cost rate(s) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) 48, Code of Federal Regulations (CFR), Chapter 1, Part 31 (48 CFR Part 31);
- The cost proposal does not include any costs which are expressly unallowable under the cost principles of 48 CFR Part 31;
- The accounting treatment and billing of prevailing wage delta costs are consistent with our prevailing wage policy as either direct labor, indirect costs, or other direct costs on all federally-funded A&E Consultant Contracts.
- All known material transactions or events that have occurred subsequent to year-end affecting the consultant's ownership, organization, and indirect cost rates have been disclosed as of the date of this certification.

I am providing the required and applicable documents as instructed on Exhibit 10-A.

Financial Management System:

Our labor charging, job costing, and accounting systems meet the standards for financial reporting, accounting records, and internal control adequate to demonstrate that costs claimed have been incurred, appropriately accounted for, are allocable to the contract, and comply with the federal requirements as set forth in [Title 23 United States Code \(U.S.C.\) Section 112\(b\)\(2\); 48 CFR Part 31.201-2\(d\); 23 CFR, Chapter 1, Part 172.11\(a\)\(2\);](#) and all applicable state and federal rules and regulations.

Our financial management system has the following attributes:

- Account numbers identifying allowable direct, indirect, and unallowable cost accounts;
- Ability to accumulate and segregate allowable direct, indirect, and unallowable costs into separate cost

Local Assistance Procedures Manual

Exhibit 10-K

Consultant Annual Certification of Indirect Costs and Financial Management System

accounts;

- Ability to accumulate and segregate allowable direct costs by project, contract and type of cost;
- Internal controls to maintain integrity of financial management system;
- Ability to account and record costs consistently and to ensure costs billed are in compliance with FAR;
- Ability to ensure and demonstrate costs billed reconcile to general ledgers and job costing system; and
- Ability to ensure costs are in compliance with contract terms and federal and state requirement

Cost Reimbursements on Contracts:

I also understand that failure to comply with 48 CFR Part 16.301-3 or knowingly charge unallowable costs to Federal-Aid Highway Program (FAHP) contracts may result in possible penalties and sanctions as provided by the following:

- Sanctions and Penalties - [23 CFR Part 172.11\(c\)\(4\)](#)
- False Claims Act - [Title 31 U.S.C. Sections 3729-3733](#)
- Statements or entries generally - [Title 18 U.S.C. Section 1001](#)
- Major Fraud Act - [Title 18 U.S.C. Section 1031](#)

All A&E Contract Information:

- Total participation amount \$ _____ on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is _____.
- Years of consultant's experience with 48 CFR Part 31 is _____.
- Audit history of the consultant's current and prior years (if applicable)
 - ☐ Cognizant ICR Audit ☐ Local Gov't ICR Audit ☐ Caltrans ICR Audit
 - ☐ CPA ICR Audit ☐ Federal Gov't ICR Audit

I, the undersigned, certify all of the above to the best of my knowledge and belief and that I have reviewed the Indirect Cost Rate Schedule to determine that any costs which are expressly unallowable under the Federal cost principles have been removed and comply with [Title 23 U.S.C. Section 112\(b\)\(2\)](#), [48 CFR Part 31](#), [23 CFR Part 172](#), and all applicable state and federal rules and regulations. I also certify that I understand that all documentation of compliance must be retained by the consultant. I hereby acknowledge that costs that are noncompliant with the federal and state requirements are not eligible for reimbursement and must be returned to Caltrans.

Name**: _____ Title**: _____
Signature: _____ Date of Certification (mm/dd/yyyy): _____
Email**: _____ Phone Number**: _____

**An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President, a Chief Financial Officer, or equivalent, who has authority to represent the financial information used to establish the indirect cost rate.

Note: ***Both prime and subconsultants as parties of a contract must complete their own Exhibit 10-K forms. Caltrans will not process local agency's invoices until a complete Exhibit 10-K form is accepted and approved by Caltrans Audits and Investigations.***

Distribution: 1) Original - Local Agency Project File
2) Copy - Consultant
3) Copy - Caltrans Audits and Investigations

Local Assistance Procedures Manual

Exhibit 10-01
Consultant Proposal DBE Commitment**EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT**

1. Local Agency: _____ 2. Contract DBE Goal: _____
3. Project Description: _____
4. Project Location: _____
5. Consultant's Name: _____ 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
Local Agency to Complete this Section		11. TOTAL CLAIMED DBE PARTICIPATION	%
17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____ 19. Proposed Contract Execution Date: _____ 20. Consultant's Ranking after Evaluation: _____ Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. _____ _____ _____		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. 12. Preparer's Signature _____ 13. Date _____ 14. Preparer's Name _____ 15. Phone _____ 16. Preparer's Title _____	

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT

CONSULTANT SECTION

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Location** - Enter the project location as it appears on the project advertisement.
- 4. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 8. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 9. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 10. DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 11. Total Claimed DBE Participation %** - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 12. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 13. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 14. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 15. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 16. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

- 17. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 18. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 19. Proposed Contract Execution Date** - Enter the proposed contract execution date.
- 20. Consultant's Ranking after Evaluation** - Enter consultant's ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
- 21. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 22. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 23. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 24. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 25. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

Local Assistance Procedures Manual

Exhibit 10-O2
Consultant Contract DBE Commitment**EXHIBIT 10-O2 CONSULTANT CONTRACT DBE COMMITMENT**

1. Local Agency: _____ 2. Contract DBE Goal: _____
3. Project Description: _____
4. Project Location: _____
5. Consultant's Name: _____ 6. Prime Certified DBE: ☐ 7. Total Contract Award Amount: _____
8. Total Dollar Amount for **ALL** Subconsultants: _____ 9. Total Number of **ALL** Subconsultants: _____

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Local Agency to Complete this Section		14. TOTAL CLAIMED DBE PARTICIPATION	\$
20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____ Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			%
23. Local Agency Representative's Signature _____ 24. Date _____ 25. Local Agency Representative's Name _____ 26. Phone _____ 27. Local Agency Representative's Title _____		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. 15. Preparer's Signature _____ 16. Date _____ 17. Preparer's Name _____ 18. Phone _____ 19. Preparer's Title _____	

DISTRIBUTION: 1. Original – Local Agency
2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT

CONSULTANT SECTION

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
- 4. Project Location** - Enter the project location as it appears on the project advertisement.
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
- 8. Total Dollar Amount for ALL Subconsultants** – Enter the total dollar amount for all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 9. Total number of ALL subconsultants** – Enter the total number of all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 10. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 11. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 12. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 13. DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 14. Total Claimed DBE Participation - \$:** Enter the total dollar amounts entered in the "DBE Dollar Amount" column. **%:** Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 15. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 16. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 17. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 18. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 19. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

- 20. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 21. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 22. Contract Execution Date** - Enter the date the contract was executed.
- 23. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 24. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 25. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 26. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 27. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

EXHIBIT 15-H: PROPOSER/CONTRACTOR GOOD FAITH EFFORTS

Cost Proposal Due Date _____ PE/CE

Federal-aid Project No(s). _____ Bid Opening Date _____ CON

The _____ established a Disadvantaged Business Enterprise (DBE) goal of _____ for this contract. The information provided herein shows the required good faith efforts to meet or exceed the DBE contract goal.

Proposers or bidders submit the following information to document their good faith efforts within five (5) **calendar** days from cost proposal due date or bid opening. Proposers and bidders are recommended to submit the following information even if the Exhibit 10-O1: Consultant Proposal DBE Commitments or Exhibit 15-G: Construction Contract DBE Commitment indicate that the proposer or bidder has met the DBE goal. This form protects the proposer's or bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions, **please attach additional sheets as needed:**

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications

Dates of Advertisement

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of DBEs Solicited

Date of Initial Solicitation

Follow Up Methods and Dates

Local Assistance Procedures Manual

Exhibit 15-H
Proposer/Contractor Good Faith Effort

- C. The items of work made available to DBE firms including those unbundled contract work items into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation in order to meet or exceed the DBE contract goal.

Items of Work	Proposer or Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract
---------------	---	--------------------	-------------	------------------------

- D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Names, addresses and phone numbers of firms selected for the work above:

- E. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining information related to the plans, specifications and requirements for the work which was provided to DBEs:

Local Assistance Procedures Manual

Exhibit 15-H
Proposer/Contractor Good Faith Effort

- F. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining bonding, lines of credit or insurance, necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

- G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization

Method/Date of Contact

Results

- H. Any additional data to support a demonstration of good faith efforts:

APPENDIX B: CALTRANS A&E CONSULTANT AUDIT AND REVIEW PROCESS

This document outlines the audit and review process for A&E contracts that at any time use state or federal funds. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans' Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach.

Applicable Standards

State and federal requirements listed below, and specific contract requirements, serve as the standards for audits and reviews performed.

Local agencies, consultants, and subconsultants are responsible for complying with state, federal, and specific contract requirements. Local agencies are responsible for determining the eligibility of costs to be reimbursed to consultants.

Applicable standards include, but are not limited to:

- ☐ Caltrans Local Assistance Procedures Manual (LAPM);
- ☐ State and Federal agreements between local agencies and Caltrans, (i.e. Master Agreements);
- ☐ Project Program Supplemental Agreements;
- ☐ 23 United States Code (U.S.C.), Section 112 – Letting of Contracts;
- ☐ 40 U.S.C., Chapter 11: the Brooks Act;
- ☐ 23 CFR, Chapter 1, Part 172 - Procurement, Management, and Administration of Engineering and Design Related Services;
- ☐ 23 CFR, Chapter 1- Federal Highway Administration, Department of Transportation;
- ☐ 48 CFR, Federal Acquisition Regulation (FAR), Chapter 1, Part 31- Contract Cost Principles and Procedures;
- ☐ 48 CFR, Chapter 99 – Cost Accounting Standards (CAS), Subpart 9900;
- ☐ 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- ☐ United States Government Accountability Office, Government Auditing Standards - Generally Accepted Government Auditing Standards (GAGAS);
- ☐ California Government Code sections 4525-4529; and
- ☐ Proposed contract terms and conditions.

Audit Guidance Available

The American Association of State Highway and Transportation Officials, Uniform Audit & Accounting Guide ([AASHTO Audit Guide](#)) is a valuable tool to guide local agencies, consultants and Certified Public Accountants (CPA) through the requirements for establishing, and audits of FAR compliant Indirect Cost Rates (ICR). The [AASHTO Audit Guide](#) is used extensively as an industry guide in the audit and review process.

Local agencies may seek accounting assistance from internal audit staff and an independent CPA for compliance. The consultant may seek professional guidance in selecting its independent CPA. See also the [AASHTO Audit Guide](#), Ch 2.5C. Selection of CPA Firm as Overhead Auditor for guidance in the selection process. Training is also offered by FHWA's

National Highway Institute (see <http://www.nhi.fhwa.dot.gov/default.aspx>). Courses offered include:

- Using the AASHTO Audit Guide for the Procurement and Administration of A&E Contracts (FHWA-NHI-231028)
- Using the AASHTO Audit Guide for the Development of A&E Consultant Indirect Cost Rates (FHWA- NHI-231029)
- Using the AASHTO Audit Guide for the Auditing and Oversight of A&E Consultant Indirect Cost Rates (FHWA-NHI-231030)

For training and additional information provided by Caltrans Local Assistance, visit the [Caltrans Local Assistance Blog](#). For FHWA's Q&A for ICRs and audits, and A&E related services, visit [FHWA](#).

Allowable Costs

23 USC 112 (b)(2)(B) states that any A&E contract or subcontract awarded, whether funded in whole or in part with Federal-aid highway funds in furtherance of highway construction projects, must be performed and audited in compliance with the Federal cost principles.

Local agencies are required to perform a cost analysis to ensure all costs are allowable and in compliance with federal and state requirements and retain documentation of negotiation activities and resources. Hourly rate(s) for each key personnel and/or classification of employee(s) proposed in cost proposals must be reasonable for the work performed and actual, allowable, and allocable in accordance with the Federal cost principles. Costs must be allowable only if the cost is incurred and cost estimates included in negotiated prices are allowable in accordance with the federal and state regulations and procedures, and contract provisions. Examples of Cost Analysis Worksheets are provided in Exhibits 10-H1 through 5 of the Local Assistance Procedures Manual available here: <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/lapm.pdf>.

Local agencies are required to apply Caltrans accepted consultant or subconsultant's ICRs, to contracts. An ICR is valid for the one-year applicable accounting period accepted or audited by Caltrans. Consultants must update, on an annual basis, ICRs in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles. For further guidance, refer to 23 CFR Part 172.11(b)(1). If the consultant is subject to Cost Accounting Standards (CAS), the consultant must use the applicable ICR for the contract.

A consultant's accepted ICR for its one-year applicable accounting period must be applied to contracts; however, once an ICR is established for a contract, it may be extended beyond the one-year applicable period, through the duration of the specific contract, provided all concerned parties agree. Agreement to the extension of the one-year applicable period must not be a condition or qualification to be considered for the work or contract award. The contract must clearly specify the ICR period if it is beyond the one-year applicable period.

Consultants must account for costs appropriately and maintain records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, and are allowable, reasonable, and allocable to the contract, and comply with Federal cost principles.

IOAI and representatives of the Federal Government have the right to conduct an audit of all contract costs. If the costs are subsequently determined to be unallowable, these costs are subject to repayment. For further guidance, refer to 23 CFR Part 172 and 48 CFR Part 31.

Generally, whenever local agencies, consultants and/or contractors are unable to provide requested documentation, it must be viewed that the services were either not performed or the costs not properly recorded. Retention of all documents is required as it reduces the possibility of audit findings and disallowed costs.

Approval or Acceptance of Indirect Cost Rates

Cognizant Letters of Approval

A cognizant approved ICR has been audited by a Cognizant agency (a State transportation agency of the State where the consultant's accounting and financial records are located or a State transportation agency to which cognizance for the particular indirect cost rate(s) of a consulting firm has been delegated or transferred to in writing by the State transportation agency where the consultant's accounting and financial records are located) in accordance with generally accepted government auditing standards to test compliance with the requirements of the Federal cost principles (per 48 CFR part 31) and the cognizant agency has either 1) issued an audit report of the consultant's indirect cost rate or 2) conducted a review of an audit report and related workpapers prepared by a certified public accountant and issued a letter of concurrence with the audited indirect cost rate(s). The cognizant agency approves the ICR and a cognizant approval letter is issued.

Caltrans Acceptance of Indirect Cost Rate

When the ICRs have not been established by a cognizant agency, Caltrans must perform an audit or review of a consultant's and subconsultant's ICR(s) to provide reasonable assurance of compliance with Federal cost principles.

An audit or review of the ICR may consist of one or more of the following:

- Perform a review to determine if the ICR was prepared in accordance with 23 CFR 172, and 48 CFR, Chapter 1, Part 31
- Perform an audit to determine if the ICR was prepared in accordance with 23 CFR 172, and 48 CFR, Chapter 1, Part 31; and issue an audit report
- Review and accept an ICR audit report and related workpapers prepared by a CPA or another State Transportation Agency

The outcome of an audit or review is for Caltrans to approve or accept the ICR so that it can be relied upon for future contracts with the consultant for a given one-year accounting period and for reliance by other contracting agencies using the same consultant. Local agencies must ensure that only approved or accepted ICRs of consultants for the applicable one-year accounting period be applied to contracts, if rates are not under dispute. Local agencies may check IOAI's website for consultant's approved or accepted ICRs. All approved or accepted ICRs are issued an Acceptance Identification (ID) number by IOAI that is posted to IOAI's [website](#). This ID number should be referenced on all future contracts that use the same fiscal year ICR. ICR can be fixed for the life of the contract in prior written document or annually updated. Once it has been updated, it must be annually updated and the most current fiscal year of ICR must be used.

ICRs that have not been accepted by Caltrans will not be eligible for indirect cost payment. An ICR approved by a cognizant agency may be used across states for the one-year applicable

accounting period, but an ICR accepted by Caltrans may **only** be applied to A&E contracts with Caltrans or local agency contracts using pass-through Caltrans funding. Local agencies include Cities, Counties, Metropolitan Planning Organization, Special Districts, and Regional Transportation Planning Agencies.

Financial Review Performed Prior to Contract Execution

All consultants, including prime and subconsultants, on a proposed contract with a dollar value greater than \$150K are subject to an ICR financial review by IOAI. The financial documents required are detailed in Exhibit 10-A, A&E Consultant Financial Document Review Request Letter and Exhibit 10-A Checklist. IOAI will review the ICR financial documents to either accept or adjust the indirect cost rate **prior to contract execution** using a risk-based approach as dictated by factors that include but are not limited to:

- History of satisfactory performance and professional reputation of consultant;
- Prior FAR compliant history and audit frequency;
- Experience of consultant with FAHP contracts;
- General responsiveness and responsibility;
- The approximate contract volume and dollar amount of all A&E contracts awarded to the consultant by Caltrans or a local agency in California within the last three calendar years;
- The number of states in which the consultant does business;
- The type and complexity of the consultant's accounting system;
- The relevant professional experience of any CPA performing audits of the consultants indirect cost rate;
- Assessment of consultant's internal control. Responses to internal control questionnaire, see AASHTO Audit Guide, Appendix B;
- For ICRs that have been adjusted by IOAI, the consultant must provide a revised cost proposal that reflects the adjusted ICR.

Local Agencies' Responsibilities

Local Agencies are responsible for obtaining all required ICR supporting documentation from A&E prime consultants and sub-consultants as outlined in Exhibit 10-A: A&E Consultant Financial Document Review Request and the Exhibit 10-A-Checklist. Local Agencies are responsible for forwarding these documents to IOAI for review. Local agencies are also required to ensure that IOAI has copies of the Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System and Exhibit 10-H: Cost Proposal for all consultants, both prime and sub-consultants. The ICR included in Exhibit 10-H must match the ICR included in the Exhibit 10-K and the consultant's ICR schedule. The proposed ICR, however, can be lower than ICR in Exhibit 10-K and the consultant's ICR schedule if the consultant elects to propose a lower ICR. For contracts spanning more than one year, local agencies are responsible for ensuring the Exhibit 10-K and cost proposals are updated annually unless all concerned parties agree to fix the ICR for the term of contract, and this is clearly specified in the contract. ICR updates are not required to IOAI if the ICR is fixed for the life of the contract. ICR's are only reviewed for consultants that are being awarded a contract, not consultants on a shortlist or prequalified list.

The Exhibit 10-H: Cost Proposal includes contract costs: direct salary or wage rates, fixed fees, other direct costs, indirect costs, total costs, and certification for the costs. Local agencies must perform and retain documentation of activities and resources used to support that a cost analysis has been performed to establish that costs and elements were determined to be fair and reasonable in accordance with Federal cost principles.

All contract supporting documentation must be retained by the local agency in project files for the required retention period. Unsupported costs may be disallowed and required to be returned to Caltrans. Having proper documentation policy and procedures, trained staff and organized project files are essential for demonstrating that costs claimed and reimbursed have been incurred, are eligible, reasonable, allowable, and allocable to the contract and comply with Federal cost principles.

Contracts below \$150,000 are not subject to the Caltrans Financial Document Review but local agencies are required to establish that all costs are in compliance with the Federal cost principles, 48 CFR, Chapter 1, Part 31, and other applicable requirements are met. All documents listed above and cost analysis documents are required to be retained in the project files to demonstrate compliance.

Instructions are provided in the Exhibit 10-A on the requirements for submitting a complete Financial Review packet. Financial packets can be e-mailed to:
conformance.review@dot.ca.gov.

Alternatively, if you do not have Internet access, you can mail Financial Review packets to:
Department of Transportation
Independent Office of Audits and Investigations
MS 2 Attention: External Audit Manager
P.O. Box 942874
Sacramento, CA 94274-0001

Consultants' Responsibilities (Both prime consultants and subconsultants)

A&E prime consultants and subconsultants in contract with local agencies using state or federal-aid highway funds should refer to Exhibit 10-A and the 10-A Checklist for the ICR financial documents required to be submitted to their local agency. Consultants must complete the "Annual Certification of Indirect Costs and Financial Management System" (Exhibit 10-K) that attests that the ICR rate proposed is in compliance with FAR (48 CFR, Chapter 1, Part 31) and that the consultant's financial management system is adequate to accumulate and segregate, reasonable, allowable, and allocable direct and indirect project costs. The Exhibit 10-A and 10-K should be submitted to the local agency who will forward a copy to IOAI along with all other related and required financial documents. For all future contracts within a same fiscal year, the consultant needs to only provide a copy of the Exhibit 10-K to the Local Agency.

Consultants must follow all the federal, state, and contract requirements outlined above in the Section above, "Applicable Standards". Each contracting consultant must ensure its ICR is not combined with any parent company's or subsidiary's ICR.

ICR schedules for both prime consultants and sub-consultants should be prepared using the accrual basis of accounting and be presented in compliance with the Federal cost principles.

Figure 10-3 at the end of this chapter provides an example of a Standard Indirect Cost Rate Schedule that consultants can use when preparing their own.

For public works Prevailing Wage contracts, all workers must be paid the prevailing wage rate determined by the Director of the Department of Industrial Relations according to the

type of work and location of the project. <http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>.

For guidance see Caltrans' Prevailing Wage Interpretive Guidance and webinar on IOAI's [website](#).

When determined necessary, IOAI may request additional information, such as a labor distribution summary and Executive Compensation Analysis (ECA). A consultant's labor distribution summary report is a labor expense report that detail all hours worked (paid and unpaid) for a fiscal year, wages earned, and benefits accrued by all the consultant's employees. The labor summary report should include employee names, salaries, hourly rates, total hours worked segregated by direct hours, indirect hours, paid time off hours, and uncompensated hours and amounts.

An ECA is an evaluation by the consultant to determine the allowability and reasonableness of executive compensation in compliance with Federal cost principles and the AASHTO Audit Guide that can be based on either the National Compensation Matrix or independent compensation surveys.

Independent Office of Audits and Investigations' Responsibilities

After IOAI receives a consultant's complete financial document packet (per Exhibit 10-A and Exhibit 10-A Checklist) from the local agency, IOAI will review the proposed ICR and supporting documents and notify local agencies in writing whether the proposed ICRs are accepted or adjusted.

Contracts will be executed after IOAI either accepts or adjusts the ICR and a revised final cost proposal (if applicable) is received. Correction of the final cost proposal, however, does NOT need to be cleared through Caltrans IOAI before executing the contract. An email notification from IOAI serves as documentation to support an accepted ICR.

Audits and Reviews to be Performed

After contract execution, a consultant's ICR may be subject to further detailed review or audit by IOAI based on certain risk factors. Costs that are determined to be unallowable as a result of the review or audit will be subject to repayment.

Indirect Cost Rate Audits

During an ICR audit, IOAI or an independent CPA will examine the consultant's proposed ICR for a one-year accounting period to ensure that unallowable costs have been removed from the indirect costs, that allowable costs have been correctly measured and properly charged and allocated, and that the ICR has been developed in accordance with the Federal cost principles (as specified in 23 U.S.C. Section 112(b)(2)(B), 23 CFR Part 172.11, 48 CFR Part 31 and other FAR and State requirements). As a result of the audit, the local agency will work with the consultant to adjust the ICR based on audit recommendations.

For guidance regarding the existing policies and procedures set forth in the federal regulations, and acceptable ICR schedules, refer to the AASHTO Audit Guide, Chapter 5, and Figure 1: Example of a FAR Compliant Indirect Cost Rate Schedule – Sample Consulting Company. There is also a review program at Appendix A of the AASHTO Audit Guide which serves as a guide for CPAs and IOAI when performing ICR audits and can also be used as a resource for consultants when preparing for an ICR audit.

CPA Workpaper Reviews

During a workpaper review of a CPA audit of an ICR, IOAI will review the CPA's audit workpapers to determine whether to issue a Cognizant Letter of Approval for the ICR. The CPA Workpaper Review determines whether: (a) the CPA's audit of the ICR was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS), (b) the CPA adequately considered the auditee's compliance with the Federal cost principles and related federal and state laws and regulations.

Chapter 11 of the AASHTO Audit Guide provides information to the CPA on the required audit disclosures.

IMPORTANT NOTE FOR CPAs: Contracts receiving state or federal funds are highly scrutinized. Materiality levels tend to be lower and more testing is required. GAGAS provides that auditors may find it appropriate to use lower materiality levels as compared with the materiality levels used in non-GAGAS audits because of the public accountability of government entities and entities receiving government funding, various legal and regulatory requirements, and the visibility and sensitivity of government programs. The AASHTO Audit Guide should be used as a tool for performing audits and attestations of A&E firms.

Contract Audits

During a Contract Audit, auditors will review a consultant's financial management system and contract cost proposal to determine if:

- The consultants' accounting system is adequate to accumulate and segregate costs;
- Costs are reasonable, allowable, allocable and supported adequately;
- The contract contains all required fiscal provisions;
- Proper state and federal procurement requirements were followed.

Incurred Cost Audits

During an Incurred Cost Audit, auditors will review incurred contract costs to determine if:

- Cost data are maintained in an accounting system that adequately gathers, records, classifies, summarizes, and reports accurate and timely financial data for direct and indirect project costs by account;
- Costs are adequately supported, reasonable, allowable, and allocable;
- Costs incurred are in compliance with state and federal laws and regulations;
- Costs incurred are in compliance with the Master Agreement and Supplemental Agreement;
- Costs incurred are in compliance with the fiscal provisions stipulated in the contract; and
- The terms required by the Master Agreement and federal laws and regulations are in the contract.

Audit Findings and Review Deficiencies

If a consultant's ICR is audited or reviewed, local agencies are responsible for ensuring all executed and future contracts reflect the audited and adjusted fiscal year ICR(s). Local agencies should request reimbursement from the consultant for overpayment on rates that were adjusted down.

The local agencies may be subject to sanctions outlined in Local Assistance Procedures Manual Chapter 20: Deficiencies and Sanctions if the state or federal government determines that any reimbursements to the consultant are the result of lack of proper contract provisions, unallowable charges, unsupported activities, or an inadequate financial management system.

Figure 1

Example of a FAR Compliant Indirect Cost Rate Schedule - Sample Consulting Company

Statement of Direct Labor, Fringe Benefits, and General Overhead for the Year Ended December 31, 20xx

Description	General Ledger Balance	Unallowable	FAR Reference	Total Proposed	Home Office	Field Office
Direct Labor	\$123,456,789	(\$934,568)	(1)(15)	\$122,522,221	\$85,765,555	\$36,756,666
Fringe Benefits						
Vacation/Paid Leaves	\$17,283,950			\$17,283,950	\$12,098,765	\$5,185,185
Payroll Taxes	\$1,530,864	(\$30,617)	(15)	\$1,500,247	\$1,050,173	\$450,074
Medical Insurance	\$10,864,197			\$10,864,197	\$7,604,938	\$3,259,259
401K Match	\$4,938,272			\$4,938,272	\$3,456,790	\$1,481,481
Incentives and Bonus	\$15,308,642	(\$3,123,456)	(2)	\$12,185,186	\$8,529,630	\$3,655,556
Other Employee Benefits	\$2,515,280	(\$553,433)	(3)	\$1,961,847	\$1,373,293	\$588,554
Total Fringe Benefits	\$52,441,206	(\$3,707,506)		\$48,733,700	\$34,113,590	\$14,620,110
General & Administrative Overhead						
Indirect Overhead Labor	\$72,696,030	(\$4,452,541)	(1)(2)(4)(15)	\$68,243,489	\$65,790,948	\$2,452,541
Purchased Labor/Subconsultants	\$22,433,019	(\$22,433,019)	(5)	\$ -	\$ -	\$ -
Office Rent	\$12,345,679	(\$987,654)	(6)	\$11,358,025	\$11,038,025	\$320,000
Supplies & Utilities	\$5,753,086			\$5,753,086	\$4,027,160	\$1,725,926
Postage and Shipping	\$1,770,000	\$321,456	(5)	\$2,091,456	\$1,464,019	\$627,437
Equipment and Maintenance	\$3,812,346			\$3,812,346	\$2,512,789	\$1,299,557
Depreciation Expense	\$6,202,469	(\$1,345,678)	(7)	\$4,856,791	\$3,205,482	\$1,651,309
Interest	\$123,456	(\$123,456)	(8)	\$ -	\$ -	\$ -
Dues and Subscription	\$123,456	(\$12,345)	(9)	\$111,111	\$77,778	\$33,333
Advertising & Marketing	\$427,406	(\$45,678)	(10)	\$381,728	\$267,210	\$114,518
Vehicles	\$5,896,123	(\$147,403)	(5)(11)(14)	\$5,748,720	\$4,024,104	\$1,724,616
Bad debts	\$12,345	(\$12,345)	(12)	\$ -	\$ -	\$ -
Legal and Accounting Services	\$3,713,580	(\$222,815)	(13)	\$3,490,765	\$3,490,765	\$ -
Fines and Penalties	\$80,000	(\$80,000)	(16)	\$ -	\$ -	\$ -
Total General & Admin. Overhead	\$135,388,995	(\$29,541,478)		\$105,847,517	\$95,898,280	\$9,949,237
Total Indirect Costs				\$154,581,216	\$130,011,870	\$24,569,347
Indirect Cost Rates				126.17%	151.59%	66.84%

FAR References:

- (1) FAR 31.202: Uncompensated overtime.
- (2) FAR 31.205-6: Profit distribution and excess of the reasonable compensation.
- (3) FAR 31.205-46, 31.205-14 & 31.205-51: Meals not for valid business purposes and associated with lobbying and lacking adequate support
- (4) FAR 31.201-2: Administrative staff costs billed to projects/clients.
- (5) FAR 31.201-2: Subconsultant labor and other direct costs billed to and paid by contracts/clients.
- (6) FAR 31.205-36 and 31.205-17: Capital lease costs, rent paid in excess of reasonable costs, and idle facilities and capacity costs.
- (7) FAR 31.201-2 & 31.205-6: Costs relates to personal use by employees and luxury vehicles.
- (8) FAR 31.205-20: Interest and other financial costs not allowable.
- (9) FAR 31.201-2: Non-business related dues and subscriptions.
- (10) FAR 31.205-1: Costs for advertisement and public relations costs and trade show expense including labor.
- (11) FAR 31.205-46(d) and 31.205-6(m)(2): Personal use of vehicle and lack of mileage logs and business purpose.
- (12) FAR 31-205-3: Bad debts and collection costs.
- (13) FAR 31.205-27 and 31.205-47: Reorganization and capital raising related costs and costs incurred in connection with violation of a law or regulation by the consultant.
- (14) FAR 31.205-46: Unreasonable costs and costs not supported by documents and lack of business purpose.
- (15) FAR 31.201-6(a) & CAS 405-40: Labor costs associated with unallowable costs.
- (16) FAR 31.205-15: Fines and penalties resulting from violations of laws and regulations.

EXHIBIT 1

PROPOSED LAVTA AGREEMENT

THIS AGREEMENT, ("Agreement") made and entered into this ____ day of _____, 2021, by and between the **Livermore Amador Valley Transit Authority** (Authority or LAVTA), and _____ (Consultant)

W I T N E S S E T H

WHEREAS, Authority desires to obtain **On- Call Engineering Consulting Services** (Project) and has issued a Request for Proposals dated _____, 2021 (which is attached hereto and incorporated as Attachment 1); and

WHEREAS, Consultant is qualified and willing to provide said On-Call Engineering Consulting Services and has submitted a proposal dated _____, 2021 (which is attached hereto and incorporated as Attachment 2)

NOW, THEREFORE, Authority and Consultant agree as follows:

1. RENDITION OF SERVICES

The Consultant agrees to perform services to Authority in accordance with the terms and conditions of this Agreement.

2. SCOPE OF SERVICES

Subject to the terms and conditions set forth in this Agreement, Consultant shall provide the services described in Attachment 1, as supplemented by Attachment 2, except when inconsistent with Attachment 1.

3. AGREEMENT DOCUMENTS

This Agreement consists of the following documents:

- (1) This Agreement, including Attachment 3, Labor Code Requirements; Attachment 4, FTA Requirements; and Attachment 5, Caltrans/FHWA Requirements
- (2) Attachment 1, RFP 2021-04, On-Call Engineering Consulting Services
- (3) Work Directives/Task Orders, if applicable
- (4) Attachment 2, Consultant's Proposal, as accepted by the Authority

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.

4. TERM; TASK ORDER PERFORMANCE PERIOD

A. Term

The term of this Agreement will be for a three-year base term commencing upon _____ and ending on _____. 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 Attachment 1.

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

It is understood that the term of the Agreement and any option term granted thereto as specified herein are subject to the Authority's right to terminate the Agreement in accordance with Section 17 of this Agreement.

B. Task Order Performance Period

The Consultant's performance of services for each Task Order shall commence upon receipt of written authority to proceed from LAVTA's Director of Operations and Innovation for the respective Task Order and the Consultant shall complete the services within the time frame, in accordance with all requirements, and pursuant to the cost proposal specified in the Task Order approved by LAVTA. Task Orders may be issued against this Agreement any during the three-year base term, from the effective date of this Agreement, and during any option term(s) unilaterally exercised by LAVTA, in accordance with the Task Order Process set forth in Section II or Attachment 1.

5. COMPENSATION AND METHOD OF PAYMENT

Consultant agrees to perform the services to be specified in each Task Order in accordance with the terms and conditions of this Agreement. At the discretion of LAVTA, compensation for each Task Order performed under this Agreement will be either firm-fixed-price (FFP) or Cost-Plus-Fixed-Fee (CPFF) with ceiling. Each Task Order shall follow the process specified herein and in Section II of Attachment 1.

It is expressly understood and agreed that in no event shall Consultant commence work prior to LAVTA's issuance of a written Notice to Proceed for each respective Task Order. Further, it is expressly understood and agreed that in no event shall Consultant be compensated in an amount greater than the amount specified in any individual Task Order for the services performed under such Task Order without issuance of a written Amendment to such Task Order by LAVTA's authorized representative.

If at any time, Consultant has reason to believe that the total compensation payable for the performance of services under this Agreement will exceed the maximum not-to-exceed amount as set for in the Task Order, Consultant shall notify LAVTA immediately in writing to that effect, indicating the estimated additional amount necessary to complete the services in the Task Order. Any cost incurred by Consultant in excess of the not-to-exceed amount as set forth in the Task Order shall be at Consultant's own risk.

Further, it is understood that execution of this Agreement does not guarantee any amount of services and/or dollar expenditure to be provided under the Agreement to Consultant.

A. Firm-Fixed-Price Compensation Basis

The firm fixed price for each Task Order shall include all labor, materials, taxes, profit, overhead, insurance, subcontractor/subconsultant costs and all other costs and expenses incurred by the Consultant. Compensation for Firm-Fixed-Price Task Orders is negotiable.

B. Cost-Plus-Fixed-Fee with Ceiling Compensation Basis

Compensation will be allowable only to the extent that estimated costs and costs incurred are compliant with Federal cost principles contained in Title 48, Code of Federal Regulations, Part 31. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under these Federal cost principles are subject to repayment by Consultant to LAVTA.

On an annual basis, 60 days before the start of the succeeding contract/Agreement year, Consultant shall submit proposed multipliers (as defined below) for Payroll Burden, Employee Benefits, Home Office, and Dedicated Field Office, to the Contract Officer for approval by LAVTA. Upon approval by LAVTA, the multipliers shall remain in effect for the contract/Agreement year.

Initial proposed rates shall be negotiated and shall be firm for the first year of the Agreement. LAVTA intends to negotiate direct and indirect (overhead) cost rates based on the agreed-upon previous-year contract rates, audited rate history and the maximum profit/fees as set forth below (Maximum Fees for Cost Plus Fixed-Fee (CPFF) with Ceiling Type Task Orders).

Negotiated hourly rates shall be fixed and used as the billing rate for the first year of the agreement. For the second or subsequent years of the Agreement term, increases in future negotiated Direct Labor Rates shall be limited to the equivalent of the Consumer Price Index (CPI) for the applicable year based on the percentage change as evidenced by the most recent Consumer Price Index (CPI) for LAVTA's geographic area available to LAVTA up to a maximum of 3.5 percent escalation, unless otherwise mutually agreed. The effective date of the CPI adjustment, if any, will commence on either (1) the first day of the second and/or subsequent year(s) of the contract, or (2) the date of the Consultant's request, whichever event is later.

Costs of Work and Fixed Fees

The cost of work shall be calculated as the sum of the direct labor times a multiplier for payroll burden, employee benefits, and overhead costs, plus other direct costs as set forth in this Section.

Direct Labor Cost

The individual direct labor costs are subject to salary administration as set forth in Title 48 Code of Federal Regulations Part 31.205-6.

Straight Time

Straight time payroll is to be the equivalent annual salary/wage divided by 2080 hours per annum for the employees whose names appear in an approved personnel list and who are directly assigned to and performing the services under this Agreement. Consultant shall be compensated through an agreed-upon multiplier for overhead including all administrative, clerical, word processing, accounting, and all other support staff utilized in performing services under this Agreement, which are not explicitly included on the approved personnel list. Charges by Consultant for an employee's straight time shall in no instance exceed the actual amount paid to such employee for time directly spent on services performed under this Agreement by such employee.

Ranges of Rates – Consultant shall provide ranges of current actual hourly rates by job titles/classifications. These ranges may be adjusted each contract year to reflect agreed-upon increases, as defined above.

Rates at Time of Award – At contract award, hourly rates, including administrative/clerical rates, shall be proposed for individuals who are expected to be assigned to the Agreement. These proposed hourly rates shall be supported by current actual rates.

New Personnel after Award – For approved new personnel to be added after contract award, Consultant shall propose rates within the approved Ranges of Rates as indicated above. Hourly rates shall be supported by current actual rates.

Overtime

LAVTA will reimburse Consultant the straight time portion and premium time portion (if payable to the employee in accordance with the Consultant's employment policies) of its employee's actual overtime pay during performance of services under this Agreement, provided that the LAVTA has approved the overtime, in writing, prior to Consultant incurring said overtime.

Charges by Consultant for an employee's overtime shall in no instance exceed the actual amount paid to such employee for time directly spent on services performed under this Agreement by such employee.

Consultant Multipliers (Payroll Burden, Employee Benefits, and Overhead)

Consultant multipliers may be inclusive of the markups for payroll burden, employee benefits and office overhead for each office location as defined

below. The multiplier is fixed and can be subject to change as indicated above.

LAVTA agreed-upon multipliers shall be used for Consultant's home office (main office) and dedicated field office, as appropriate to the assigned location of individuals working on the project. The multipliers shall be applied to direct labor costs only as defined above. LAVTA approved Consultant multipliers are included in Consultant's Cost Proposal.

Payroll Burden

Consultant and LAVTA agree that the following will be considered as Payroll Burdens and as such shall be paid to Consultant as compensation for said costs, as set forth below.

"Payroll Burden" for Consultant's employees is defined as: The cost of all employment taxes, Consultant's portion of social and retirement charges and contributions imposed by law, or labor contract contributions (if applicable), or regulations, with respect to or measured by Consultant's payroll, including but not limited to, the Consultant's cost of owner-required insurance.

Employee Benefits

"Employee Benefits" for Consultant's employees defined as: The cost of all Consultant's contractual and voluntary employee benefits, including but not limited to, holidays, vacations, sick leave, jury duty leave, group medical, life insurance, salary continuance insurance, bonus schemes (including Directors' drawings of dividends), employee stock ownership plan, savings plan, retirement plan, relocation benefits, and all other employee benefit plans.

Office Overhead (Indirect Costs)

LAVTA and Consultant agree that the following will be considered as office overhead categories and as such shall be paid to Consultant as compensation for said costs including all administrative, clerical, word processing, accounting and all other support staff utilized in the performance of services under this Agreement, which are not explicitly included on the approved personnel list.

Consultant's Home Office Overhead shall apply to personnel assigned in Consultant's Home Office in support of the performance of services under this Agreement

Allowable Other Direct Costs (ODCs)

Other Direct Costs shall be proposed at cost without markup. Examples of Other Direct Costs include, but are not limited to: travel expenses, parking, tolls, mail costs, film, photo developing, facsimiles,

printing/copying, plan reproduction, blue print services, and subconsultants directly associated with the project. Expenditures for allowable other direct costs in excess of \$500.00 and not included in the aforementioned list shall require advance approval by LAVTA. Supporting documentation is required for reimbursement of all other direct costs.

Limitations on Direct Costs

The following are limitations:

Travel Expenses - All travel and relocation related plans must be approved in writing by LAVTA prior to the commencement of the travel. If written approval is received for relocations, travel, temporary accommodations and or assistance, FAR 31.205-46(a) Sections 1 and 2 and Federal Travel Regulation (41 CFR 301-304) will apply. Lodging and per diem rates shall not exceed the U.S. General Services Administration (GSA) rate at the time of travel for the specific area. Costs incurred for travel, subsistence, and relocation of personnel engaged in the performance of services under this Agreement, if approved in advance by LAVTA will include the following:

- Relocation expenses, travel, temporary accommodations, and/or subsistence related to mobilization travel to the Consultant's dedicated project office for Consultant and Subconsultant personnel permanently assigned to the project. Such expenses shall be reduced by any amount received from others by Consultant or Subconsultant for demobilization from the prior project assignment.
- Relocation expenses, travel, temporary accommodations, and/or subsistence related to demobilization travel from the Consultant's dedicated project office for Consultant and Subconsultant personnel who have been permanently assigned to the project. Individuals assigned from domestic locations shall be eligible for up to the cost of returning to the original domestic location. Individuals assigned from international locations shall be eligible for the cost of relocating to the Consultant's or Subconsultant's domestic home office or to another domestic location, whichever is less.
- Travel, accommodations and subsistence (directly related to the Scope of Services) for business trips to and from the Project Site, to and from LAVTA's contractors and suppliers, or to and from other locations approved by the LAVTA. Such travel may originate at Consultant's or Subconsultant's home or branch office, or at the Consultant's dedicated field office, or at LAVTA's central or field offices.

Unallowable Other Direct Costs (ODCs)

The following ODCs are not allowable unless they are authorized by prior written approval of LAVTA's representative:

- Costs associated with registration for training, seminars, and technical association meetings.
- Costs associated with employee incentive compensation including cash bonuses, suggestion awards, safety awards and other forms of incentive compensation.
- Costs associated with leasing, maintaining, insuring and operating dedicated project vehicles at the dedicated office.
- Computer hardware and software support, software licenses, or cellular phone usage.
- Safety equipment such as steel toed boots, safety vests, and hard hats.
- Insurance
- Cost of any normal equipment, tools, or vehicles (unless approved) hired, leased or purchased for the performance of services, provided that the depreciated value of such items purchased by Consultant shall be credited to LAVTA at the completion of the work performed under this Agreement.
- Shipping
- Drafting supplies
- Surveying supplies
- Models and renderings
- Other expressly agreed ODC's.

Subcontracts (Subconsultants)

For costs for individual consultants, subconsultants and other outside services which are not directly contracted for by the Consultant, but where the Consultant is acting as LAVTA's agent for management of the work, there will be no added subconsultant mark-up.

The Subconsultant Fixed Fee for each Task Order shall be negotiated on an individual basis, plus a separately stated Subconsultant's fee based on an agreed-upon percentage of the agreed-upon fully burdened labor costs as defined above. The Consultant's mark-up shall be derived from a two (2) percent subconsultant fixed fee applied to agreed-upon subcontract costs.

The agreed upon subconsultant mark-up for "Subcontract Costs" shall apply throughout the entire term of the Agreement and shall not be subject to increase.

Maximum Fees for Cost-Plus-Fixed-Fee (CPFF) with Ceiling Task Orders

The Consultant fixed fee for each Task Order shall be negotiated on an individual basis. The agreed upon Consultant's fee shall apply throughout the entire term of the task orders.

The Consultant's maximum fee, as a percentage of fully burdened Direct Labor Cost, allowable by LAVTA shall not exceed 6%.

C. Manner of Payment

The Consultant shall submit separate invoices/billing statements on or as soon as practical after the first day of each calendar month. Consultant shall submit monthly invoices, detailing the services performed and allowable reimbursable expenses incurred during the previous calendar month for Services to be performed at LAVTA's request, the Task Order(s), the personnel performing these services, the hours worked, and the applicable hourly rate of compensation, as specified in Attachment 2.

Each invoice must be segregated, computed and documented as follows:

1. Firm-Fixed-Price Task Orders (FFP)

For Fixed Price Task Orders, Consultant shall reach agreement with LAVTA's Project Manager on the current percentage complete of the Task Order prior to submittal of invoice. Consultant shall provide a basis for percentage complete using a percent complete breakdown by Task Order task.

2. Cost-Plus-Fixed-Fee (CPFF) with Ceiling Task Orders

By Task

1. Direct Labor Costs
2. Payroll Burden, Employee Benefits and Office Overhead (Multipliers)
3. Other Direct Costs (used exclusively for a specific task)

Overall Project

4. Other Direct Costs (used in support of multiple tasks)
5. Fixed Fee Allocation (allocated to each payment cycle based on the portion of the current billing period cost of work to the total agreed upon not-to-exceed amount of the current Task Order)

Consultant shall provide supporting documentation for its invoices as required by LAVTA. LAVTA will endeavor to pay approved invoices/billing statements within 30 calendar days of their receipt. LAVTA reserves the right to withhold payment to the Consultant if LAVTA determines that the quantity or quality of the work performed is unacceptable. LAVTA shall provide written notice to the Consultant within 10 business days of LAVTA's decision not to pay and the reasons for non-payment.

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

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

Consultant represents that Consultant's taxpayer identification number (TIN) is as evidenced by a completed Federal Form W-9.

6. CONSULTANT'S KEY PERSONNEL

It is understood and agreed by the parties that at all times during the term of this Agreement that _____ shall serve as the primary staff person of Consultant to undertake, render, and oversee all of the services under this Agreement. Upon written notice by the Consultant and approval by the Authority, which will not be unreasonably withheld, the Consultant may substitute this person with another person, who may possess similar qualifications and experience for this position.

7. CHANGES

Authority may, at any time, by written order, make changes within the Scope of Work and services described in this Agreement. If such changes cause an increase in the budgeted cost of or the time required for performance of the agreed upon work, an equitable adjustment as mutually agreed shall be made in the limit on compensation as set forth in Section 5. In the event that the Consultant encounters any unanticipated conditions or contingencies that may affect the scope of work or services, schedule or the amount of compensation specified herein, Consultant shall so advise Authority immediately upon notice of such condition or contingency. The written notice shall explain the circumstances giving rise to the unforeseen condition or contingency and shall set forth the proposed adjustment in schedule or compensation. This notice shall be given to the Authority prior to the time that Consultant performs work or services related to any proposed adjustment. The pertinent changes shall be expressed in a written supplement to this Agreement prior to implementation of such changes.

8. CONSULTANT'S STATUS

Consultant is an independent consultant and not an employee or agent of Authority and has no Authority to contract or enter into any other agreement in the name of Authority. Consultant has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by Consultant who are assisting in the performance of services under this Agreement. Consultant shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. Consultant shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

9. RESPONSIBILITY; INDEMNIFICATION

Consultant shall, to the fullest extent allowed by law, with respect to all services performed in connection with the Agreement, indemnify, defend, and hold harmless the Authority and its officers, officials, agents, employees and volunteers from and against any and all liability, claims, actions, causes of action, losses, damages, costs, or demands whatsoever against any of them, including

any injury to or death of any person or damage to property or other liability of any nature, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or Consultant's employees, officers, officials, agents or independent contractors. Such losses, damages, and costs shall include reasonable attorneys' fees of counsel of Authority's choice, expert fees and all other costs and fees of litigation. Consultant shall not be obligated under this Agreement to indemnify Authority to the extent that a judge or jury determine that the damage is caused by the active negligence or willful misconduct of Authority, its agents or employees. To the fullest extent permitted by law, this indemnity shall survive the termination or expiration of this Agreement.

10. INSURANCE

Refer to Section II of Attachment 1 for the Insurance Requirements.

11. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

All Consultant and subcontractors/subconsultants costs incurred in the performance of this Contract will be subject to audit. Consultant and its subcontractors/subconsultants shall permit LAVTA, or its authorized representatives to inspect, examine, make excerpts from, transcribe, and copy Consultant's books, work, documents, papers, materials, payrolls records, accounts, and any and all data relevant to the Agreement at any reasonable time, and to audit and verify statements, invoices or bills submitted by the Consultant pursuant to this Agreement. The Consultant shall also provide such assistance as may be required in the course of such audit. Consultant shall retain these records and make them available for inspection hereunder for a period of four (4) years after expiration or termination of the Agreement.

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

12. DATA TO BE FURNISHED BY AUTHORITY--CONFIDENTIALITY

All data, reports, surveys, studies, drawings, and any other documents and materials made available to Consultant by Authority for use by Consultant in the performance of its services under this Agreement shall be made available for information only and shall be returned to Authority at the completion or termination of this Agreement.

Any LAVTA materials to which the Consultant has access or materials prepared by the Consultant during the course of this Agreement ("confidential information") shall be held in confidence by the Consultant, who shall exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of the Consultant as necessary to accomplish the rendition of services required by this Agreement.

Consultant shall not release any reports, information or promotional materials prepared in connection with this Agreement, whether deemed confidential or not, to any third party without the approval of the LAVTA.

13. OWNERSHIP OF WORK

- A. All communications and records originated, prepared, and in the process of being prepared, for the services to be performed by Consultant under this Agreement, including, but not limited to, findings, analyses, submittals, conclusions, opinions, engineering drawings, specifications, standards, process sheets, photographs, videos, manuals, technical reports and recommendations with respect to the subject matter of this Agreement and raw and underlying data of such materials, regardless of format or media, including software, reports and other documentation (all of the foregoing, collectively, the "Work Product"), shall be delivered to and become the property of LAVTA. LAVTA shall be entitled to access and to copy the Work Product during the progress of the Work. Any Work Product remaining in the hands of Consultant or in the hands of any subcontractor/subconsultant upon completion or termination of the work shall be immediately delivered to LAVTA and not later than within two (2) weeks of completion or termination of the Work. If any materials are lost, damaged or destroyed before final delivery to LAVTA, Consultant shall replace them at its own expense, and Consultant assumes all risk of loss, damage or destruction of or to such materials.
- B. Any specific knowledge of LAVTA proprietary information gained as a result of this Agreement shall be used exclusively to accomplish the Scope of Work outlined above and for no other purpose.
- C. Any and all rights of copyright to Work Product prepared under this Agreement are hereby assigned to LAVTA. Consultant agrees to execute any additional documents that may be necessary to evidence such assignment. Consultant agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in such Work Product. Except for its own internal use, Consultant shall not publish or reproduce such Work Product in whole or in part, or in any manner or form, nor authorize others to do so, without the written consent of LAVTA.
- D. Notwithstanding anything herein to the contrary, LAVTA acknowledges that as part of Consultant's provision of work hereunder, Consultant may utilize proprietary works of authorship including, without limitation, software, methodologies, tools, specifications, drawings, sketches, models, samples, records and documentation, as well as copyrights, trademarks, service marks, ideas, concepts, know-how, techniques, knowledge or data, that have been originated or developed by Consultant or by third parties under Agreement to, or which have been purchased by, Consultant (all of the foregoing, collectively, "Consultant's Information"). LAVTA agrees that Consultant's Information is and shall remain the sole property of Consultant or such third party. Consultant agrees that LAVTA shall be entitled to use Consultant's Information in connection with this Agreement, and shall grant to LAVTA a perpetual, royalty-free, irrevocable, worldwide, non-exclusive license to use all Consultant's

Information and to create and use derivative works of Consultant's Information in connection with this Agreement.

- E. Consultant represents and warrants that it has or will have all appropriate licenses, agreements and/or ownership pertaining to all intellectual property, including but not limited to patents and copyrights, used in connection with the performance of its obligations under this Agreement. Consultant further represents and warrants that it will have all necessary rights to patentable and copyrightable materials, equipment, devices or processes not furnished by LAVTA used on or incorporated in the work and assumes all risks arising from the use of such patentable and copyrightable materials, equipment, devices, or processes.
- F. Consultant shall indemnify, defend and hold harmless LAVTA, its directors, officers, agents and employees to the maximum extent permitted by law from and against any and all claims, liabilities, losses, damages or expenses (including attorneys' fees and related costs, whether or not litigation has commenced), whether direct or indirect, arising out of, relating to, or in connection with the ownership, possession or use of any materials, equipment, devices, or processes that are protected by intellectual property rights, including patent, copyright and trade secret. In case such materials, equipment, devices or processes are held to constitute an infringement and their use enjoined, Consultant, at Consultant's sole cost and expense, shall: (a) secure for LAVTA the right to continue using the materials, equipment, devices or processes by suspension of the injunction or by procuring a royalty-free license or licenses, or (b) replace such materials, equipment, devices, or processes with non-infringing materials, equipment, devices or processes that perform the same functions as the infringing item, or (c) modify them so that they become non-infringing or remove the enjoined materials, equipment, devices or processes and refund the sums paid therefore, without prejudice to any other rights of LAVTA. If the amount of time necessary to proceed with one of these options is deemed excessive by LAVTA, LAVTA may direct Consultant to select another option or risk default.

14. AUTHORITY WARRANTIES

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

15. RIGHTS AND REMEDIES OF THE AUTHORITY

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.

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.

16. 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 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 Authority to suspend the work wholly or in part. The suspended work will be resumed when the Consultant is provided with written direction from 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 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 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.

17. 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 Section 5, all sums actually due and owing from the Authority upon the effective date of termination, plus any costs reasonably necessary to effect the termination. 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. 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 Authority may terminate the

Agreement for default if the Consultant 1) does not cure such breach within seven 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, 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.

18. CLAIMS OR DISPUTES

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

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

If an agreement can be reached which resolves the Consultant's claim, the parties will execute a contract change to document the resolution of the claim. If the parties cannot reach an agreement with respect to the Consultant's claim, they may choose to pursue a dispute resolution process.

19. CONFLICT OF INTEREST

A. General

Depending on the nature of the work performed, a Consultant of LAVTA may be subject to the same conflict of interest prohibitions established by the Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) and California law that govern LAVTA'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, 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 or subject to termination.

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

No person previously in the position of director, officer, employee or agent of LAVTA may 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 LAVTA, or any officer or employee of LAVTA, for a period of twelve months after leaving office or employment with LAVTA 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.

No officer or employee of LAVTA during his or her tenure or for one year after that tenure shall have any interest, direct or indirect, in this Agreement or the proceeds under this Agreement.

B. Organizational Conflicts of Interest

Consultant shall 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 LAVTA; 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.

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

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

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

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

20. LABOR CODE REQUIREMENTS

This Agreement may involve the provision of inspection and/or surveying work that may be subject to the California Labor Code. The Consultant shall comply with the requirements in Attachment 3, Labor Code Requirements, to the extent applicable.

21. 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.

22. 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 Contract 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.

23. WARRANTY OF SERVICES

- A. Consultant warrants that its professional services will be performed in accordance with the professional standards of practices of comparable Engineering Design firms at the time the services are rendered. In addition, Consultant shall provide such specific warranties as may be set forth in the individual Task Orders as agreed upon by the parties.
- B. In the event that any services provided by the Consultant hereunder are deficient because of Consultant's or subconsultants failure to perform said services in accordance with the warranty standards set forth above, LAVTA shall report such deficiencies in writing to the Consultant within a reasonable time. LAVTA thereafter shall have:
 - 1. The right to have the Consultant re-perform such services at the Consultant's expense; or
 - 2. The right to have such services done by others and the costs thereof charged to and collected from the Consultant if within thirty days after written notice to the Consultant requiring such re-performance, Consultant fails to give satisfactory evidence to LAVTA that it has undertaken said re-performance.
 - 3. The right to terminate the Agreement for default.Consultant shall be responsible for all errors and omissions and is expected to pay for all redesign and re-construction work as a result of errors and omissions.

24. SUBCONTRACTS

Consultant shall not subcontract all or any portion of its services under this Agreement without the prior written approval of the Authority, and any attempt thereat shall be void and unenforceable. In the event that Consultant enters into one or more subcontracts pursuant to this article, it is understood and agreed that the participating subcontractors shall be solely and directly responsible to Consultant, and Authority shall have no obligation to them.

25. ASSIGNMENT OF AGREEMENT

Consultant shall not assign this Agreement or any part thereof without prior express written consent of Authority, and any attempt thereat shall be void and unenforceable.

26. FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

This Contract may be subject to financial assistance from the U.S. Department of Transportation, Federal Transit Administration (FTA). To the extent applicable, the Consultant agrees to comply with the requirements in Attachment 4.

27. CALTRANS/FHWA REQUIREMENTS

This Contract may be subject to financial assistance from the California Department of Transportation (Caltrans) and/or the Federal Highway Administration (FHWA). To the extent applicable, the Consultant agrees to comply with the requirements in Attachment 5 and in the Local Assistance Procedures Manual (2021), available at <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/lapm.pdf>, which is incorporated herein by this reference.

28. NOTICES

Except for invoices submitted by Consultant pursuant to Article 4, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered or mailed to such party at their respective addresses as follows:

To Authority:	Executive Director Livermore/Amador Valley Transit Authority 1362 Rutan Court Suite 100 Livermore, CA 94551
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To Consultant :

29. LAWS AND REGULATIONS

Consultant shall comply with its standard of care with regard to any and all laws, statutes, ordinances, rules, regulations and procedural requirements of any national, state or local government and of any agency of such government, including Authority, which relate to or in any manner affect the performance of this Agreement.

30. CALIFORNIA PUBLIC RECORD ACT REQUESTS (CPRA)

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.

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.

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. NO THIRD PARTY BENEFICIARIES

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

33. CHOICE OF LAW

All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of California applicable to agreements made and to be performed within the state.

34. ENTIRE AGREEMENT; MODIFICATION

This Agreement, including its attachments, is the entire agreement of the parties and supersedes any prior written or oral communications. Consultant represents that in entering into this Agreement, it has not relied on any previous representations, inducements or understandings of any kind or nature. 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.

35. SEVERABILITY

If any provision, or any portion of any provision, of any contract resulting from this proposal shall be held invalid, illegal or unenforceable, the remaining provisions or portions of any provisions shall be valid and enforceable to the extent possible.

36. BENEFIT OF AGREEMENT

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

37. ATTORNEY'S FEES AND OTHER FEES

Should either party institute any action to enforce this Agreement, or any provision hereof, the prevailing party in any such action or proceeding shall be entitled to receive from the other party all costs and expenses, including reasonable attorney's fees.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

**THE LIVERMORE AMADOR VALLEY
TRANSIT AUTHORITY**

Executive Director

Date: _____

CONSULTANT*

By*

Title

By*

Title

Date: _____

APPROVED AS TO FORM:

By: _____
Attorney for the Authority

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

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

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

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

Attachment 3: Labor Code Requirements

1. LABOR COMPLIANCE REQUIREMENTS. In the performance of this Agreement, Contractor's attention is directed to the following requirements of the Labor Code.

A. Hours of Labor. Eight hours labor constitutes a legal day's work. Contractor shall forfeit, as penalty to LAVTA, \$25 for each worker employed in the performance of the Contract by Contractor or by any subcontractor under it for each calendar day during which such worker is required or permitted to work more than eight hours in any one day and 40 hours in any one calendar week in violation of the provisions of the California Labor Code and in particular, Sections 1810 to 1815, inclusive. Work performed by employees of the Contractor in excess of eight hours per day and 40 hours during any one week shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one-and-one-half times the basic rate of pay, as provided in Section 1815.

B. Prevailing Wages. Contractor shall comply with California Labor Code Sections 1770 to 1780, inclusive. In accordance with Section 1775, the Contractor shall forfeit as a penalty to LAVTA an amount as determined by the Labor Commissioner not to exceed \$200 for each calendar day or portion thereof for each worker paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the contract by him or by any subcontractor under it in violation of the revisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of Contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of Contractor or subcontractor in meeting their respective prevailing wage obligations, or the willful failure by Contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if Contractor or subcontractor had knowledge of the obligations under the Labor Code. In addition to said penalty and pursuant to Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Contractor or subcontractor.

Pursuant to the provisions of Section 1773 of the Labor Code, LAVTA has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work applicable to the work to be done from the Director of the Department of Industrial Relations. Copies of the prevailing wage rates are on file at LAVTA and are available for review upon request. Pursuant to §1773.2 of the Labor Code, the Contractor shall post general prevailing wage rates at a prominent place at the site of the work.

If a worker employed by a subcontractor on a Public Works Project is not paid the general prevailing per diem wages by the subcontractor, the Contractor is not liable for the penalties described above unless the Contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the Contractor fails to comply with all of the following requirements:

- 1) The Contract executed between Contractor and the subcontractor for the performance of work on Public Works Project shall include a copy of the requirements in Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 of the Labor Code.

- 2) Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees by periodic review of the certified payroll records of the subcontractor.
- 3) Upon becoming aware of the subcontractor's failure to pay the specified prevailing rate of wages to the subcontractor's workers, the Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the Public Works Project.
- 4) Prior to making final payment to the subcontractor for work performed on the Public Works Project, the Contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to the subcontractor's employees on the Public Works Project and any amounts due pursuant to Section 1813 of the Labor Code.

Pursuant to Section 1775 of the Labor Code, the Division of Labor Standards Enforcement shall notify Contractor on a Public Works Project within fifteen (15) days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that Public Works Project to pay workers the general prevailing rate of per diem wages. If the Division of Labor Standards Enforcement determines that employees of a subcontractor were not paid the general prevailing rate of per diem wages and if LAVTA did not retain sufficient money under the Contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, Contractor shall withhold an amount of money due the subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by the Division of Labor Standards Enforcement. Contractor shall pay any money retained from and owed to a subcontractor upon receipt of notification by the Division of Labor Standards Enforcement that the wage complaint has been resolved. If notice of the resolution of the wage complaint has not been received by Contractor within one hundred eighty (180) days of the filing of a valid notice of completion or acceptance of the Public Works Project, whichever occurs later, Contractor shall pay all monies retained from the subcontractor to LAVTA. These monies shall be retained by LAVTA pending the final decision of an enforcement action.

C. Payroll Records. Contractor and each subcontractor shall submit electronic certified payroll records to the California Labor Commissioner in the manner and format set forth in California Labor Code section 1771.4. In addition to submitting certified payroll to the California Labor commissioner, Contractor shall submit certified payroll to LAVTA once per week.

Electronic submittal will be a web-based system, accessed electronically on the internet at the address provided by LAVTA. The web-based system is LCPtracker. Contractor and each subcontractor will be given a Log On identification and password to access the reporting system. Contractor shall be responsible for managing and certifying all lower tier subcontractors certified payroll submittals.

Upon request by LAVTA, the Contractor shall be required to submit paper copies of certified payrolls and other required labor compliance documents.

The Contractor's attention is directed to the following provisions of Labor Code Section 1776. The Contractor shall be responsible for the compliance with these provisions by its subcontractors.

- 1) Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
- 2) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - ii. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to LAVTA, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - iii. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either LAVTA, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractor and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.
- 3) Unless required to be furnished directly to the Labor Commissioner in accordance with Labor Code Section 1771.4(3)(b), the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
- 4) The Contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of a written request.
- 5) Any copy of records made available for inspection as copies and furnished upon request to the public or LAVTA, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's

name, address and social security number. The name and address of the Contractor shall not be marked or obliterated.

- 6) The Contractor shall inform LAVTA of the location of records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
- 7) In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such contractor must comply with this section. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty the State or LAVTA, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The penalties specified in subdivision (g) of Labor Code Section 1776 for noncompliance with the provisions of said Section 1776 may be deducted from any monies due or which may become due to the Contractor.
- 8) The Contractor and each subcontractor shall preserve their payroll records for a period of three (3) years from the date of completion of the Contract.

D. Labor Non-discrimination. Attention is directed to Section 1735 of the Labor Code which provides that Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, except as provided in Section 12940 of the Government Code. Contractor further agrees to include a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

E. Apprentices. The Contractor and all subcontractors shall comply with the requirements of California Labor Code sections 1777.5, 1777.6 and 1777.7 regarding the employment of apprentices.

2. **COORDINATION WITH FEDERAL AND CALIFORNIA PREVAILING WAGE LAWS**. When both Federal and California Prevailing Wage Laws apply to the Agreement, the Contractor and any subcontractor shall pay their workers the higher of the two prevailing wage rates. To the extent that contract provisions required by Federal and State law are inconsistent, the Contractor is responsible for complying with the more comprehensive or stricter requirements. The Contractor and all subcontractors shall insert this clause in any lower-tier contract. Federal prevailing wage rate, if applicable, are contained in a separate section.
3. **PROHIBITION AGAINST CONTRACTING WITH DEBARRED SUBCONTRACTORS**. The Contractor is prohibited from performing work on a public works project with a subcontractor who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

4. **PAYMENT OF WORKERS' COMPENSATION.** By executing this Agreement, the Contractor certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement."
5. **PUBLIC WORKS REGISTRATION.** The Contractor must be registered with the California Department of Industrial Relations pursuant to Labor Code Section 1725.5. This Agreement is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4. The Contractor must post job site notices, as prescribed by regulation. The Contractor shall furnish the records specified in Labor Code Section 1776 directly to the Labor Commissioner, monthly in a format prescribed by the Labor Commissioner.
6. **PERMITS, LICENSES, TRAINING.** The Contractor shall procure all permits, licenses, certifications, and training (including OSHA permits pursuant to Labor Code Section 6500), pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work.

The Environmental Quality Act (Public Resources Code, Section 21000 to 21176) may be applicable to permits, licenses and other authorizations which the Contractor must obtain from state or local agencies in connection with performing the work of the Contract. The Contractor shall comply with the provisions of that Act in obtaining such permits, licenses and other authorizations and they shall be obtained in sufficient time to prevent delays to the work. The Contractor shall comply with permits obtained by LAVTA, if any, for the work.

For all work to be performed on surfaces coated with any detectable level of lead, and to the extent applicable, the Contractor must comply with Cal/OSHA Construction Safety Orders, Lead, Section 1532.1; California Code of Regulations, Titles 8 and 17; and the EPA's Lead-Based Paint Renovation, Repair and Painting (RRP) Rule. To the extent applicable, the Contractor, and any subcontractors, must ensure workers possess all required California Department of Public Health certifications in accordance with California Code of Regulations, Title 17, Section 35001 *et seq.* and California Code of Regulations, Title 8, Section 1532.1.

7. **WAGE KICKBACKS AND WORKER REGISTRATION FEES PROHIBITED.** The Contractor and subcontractors at any tier shall comply with Labor Code sections 1778 through 1779. The Contractor and subcontractors shall not take, receive, or conspire with another to take or receive, for their own use or the use of any other person any portion of the wages of any worker or subcontractor in connection with this Agreement. The Contractor and subcontractors shall not charge, collect, or attempt to charge or collect, directly or indirectly, a fee or valuable consideration for registering any person to work in connection with the Agreement, or for giving information as to where such employment may be procured, or for placing, assisting in placing, or attempting to place, any person in connection with the Agreement.

ATTACHMENT 4: FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

If this Contract is funded with financial assistance from the U.S. Department of Transportation, Federal Transit Administration (FTA), the following provisions apply.

A. Fly America Requirements

The Consultant agrees to comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 CFR Part 301.10, which provide that recipients and sub-recipients of Federal funds and their consultants are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property to the extent such service is available, unless travel by foreign air carrier is a matter of necessity as defined by the Fly America Act. The Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Consultant agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

B. Energy Conservation

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Federal Energy Policy and Conservation Act, 49 U.S.C. §§ 6201 et seq.

C. Clean Water and Air Requirements

The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq., and the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Consultant agrees to report each violation to the LAVTA and understands and agrees that LAVTA will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office.

The Consultant also agrees to include these requirements in each subcontract exceeding \$150,000 financed in part or in whole with federal assistance provided by the FTA.

D. Lobbying

Consultant shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Consultant shall certify that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by 31 U.S.C. § 1352. Consultant shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Contract, grant or award covered by 31 U.S.C. § 1352. Such

disclosures shall be forwarded to LAVTA. Consultant shall ensure that all of its subconsultants under this Agreement shall certify the same. Prior to execution of this Agreement, Consultant shall submit the "Certification for Federal Aid Contracts," included in the Contract Documents. LAVTA is responsible for keeping the certification of the Consultant who is, in turn, responsible for keeping the certification forms of subconsultants.

E. Government-wide Debarment and Suspension.

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

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

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

F. Access to Records and Reports

Consultant shall provide all authorized representatives of LAVTA, the FTA, and the Comptroller General of the United States access to any books, documents, papers and records of the Consultant which are directly pertinent to this Agreement for the purposes of making audits, copies, examinations, excerpts and transcriptions. Consultant also agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Consultant agrees to maintain the same until LAVTA, the FTA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

G. Federal Changes

Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (28) dated February 2021) between LAVTA and the FTA , as they may be amended or promulgated from time to time during the term of this Agreement. Consultant's failure to so comply shall constitute a material breach of this Agreement.

H. No Government Obligation to Third Parties

LAVTA and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to LAVTA, Consultant, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

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

I. Program Fraud and False or Fraudulent Statements and Related Acts

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

The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under LAVTA of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Consultant, to the extent the Federal Government deems appropriate.

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

J. Disadvantaged Business Enterprises (DBE)

LAVTA, recipient of federal financial assistance from the Federal Transit Administration (FTA) is committed to and has adopted a Disadvantaged Business Enterprise Program for contracts in accordance with federal regulations 49 CFR Part 26, issued by the U. S. Department of Transportation (U.S. DOT).

It is the policy of LAVTA to ensure nondiscrimination in the award and administration of all contracts and to create a level playing field on which Disadvantaged Business Enterprises (DBEs) can compete fairly for contracts and subcontracts relating to LAVTA's construction, procurement and professional services activities. To this end, LAVTA has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside of the DBE Program. In connection with the performance of this contract, the Consultant will cooperate with LAVTA in meeting these commitments and objectives.

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

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

K. Civil Rights Requirements

Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Equal Employment Opportunity

The following equal employment opportunity requirements apply:

Race, Color, Creed, National Origin, Sex

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the CONSULTANT agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,"

41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

Age

In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

Disabilities

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

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

L. Davis-Bacon and Copeland Anti-Kickback Acts

This Agreement may involve the provision of inspection and/or surveying work that may be subject to Davis-Bacon Act requirements as follows:

a. Minimum wages

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

the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section I (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Subsection (A)(4) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which such work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (A)(4) of this section) and the Davis-Bacon poster (WH- 1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to Subsections (A)(4)(b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

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

c. Payrolls and basic records

i. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker,

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

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

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

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

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

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

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (C)(2)(b) of this Section.

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

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

d. Apprentices and trainees

i. Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate,

who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journey hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- ii. Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less

than the applicable predetermined rate for the work performed until an acceptable program is approved.

- iii. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- e. Compliance with Copeland Act requirements - The Contractor shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
- f. Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower subcontractor with all the contract clauses in 29 CFR 5.5.
- g. Contract termination: Debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- h. Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- i. Disputes Concerning Labor Standards - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- j. Certification of eligibility
 - i. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - ii. No part of this Contract shall be subcontracted to person or firm ineligible for an award of a government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

M. Incorporation of Federal Transit Administration (FTA) Terms.

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any LAVTA requests which would cause LAVTA to be in violation of the FTA terms and conditions.

N. Recycled Products.

The Consultant agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

O. Safe Operation of Motor Vehicles.

The Consultant is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Consultant or LAVTA. The Consultant agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Consultant owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

P. Notification Regarding False Claims, Fraud, Waste, Abuse, and Other Legal Matters.

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

The Contractor further agrees to promptly notify the FTA Chief Counsel, the FTA Regional Counsel for FTA Region IX, and the U.S. DOT Office of Inspector General if it has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA, including but not limited to knowledge that a person has or may

have (i) submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or (ii) committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance.

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

"Knowledge," as used in this section, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the Contractor's possession. "Promptly," as used in this section, means to refer information without delay and without change.

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

Attachment 5: Caltrans/FHWA Requirements

1. Retention of Records/Audits.

For the purpose of determining compliance with Gov. Code § 8546.7, the Consultant, Subconsultants, and Agency shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the Agreement including, but not limited to, the costs of administering the Agreement. All parties, including the Consultant's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement. Agency, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the Consultant, Subconsultants, and the Consultant's Independent CPA, that are pertinent to the Agreement for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

2. Prohibition of Expending Local Agency, State, or Federal Funds for Lobbying.

A. The Consultant certifies, to the best of his or her knowledge and belief, that:

1. No State, Federal, or Agency appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this Agreement, or with the extension, continuation, renewal, amendment, or modification of this Agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

C. The Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

3. Non-Discrimination Clause and Statement of Compliance.

The Consultant's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Consultant has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.

During the performance of this Agreement, Consultant and its subconsultants shall not deny the Agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by Agency to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

Consultant shall permit access by representatives of the Department of Fair Employment and Housing and the Agency upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause.

Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

The Consultant, with regard to the work performed under this Agreement, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

The Consultant shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 -Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the Consultant shall not participate

either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.

Consultant, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the Agency components of the DBE Program Plan, Consultant, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

4. Debarment and Suspension Certification.

A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
3. Does not have a proposed debarment pending; and
4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

5. Consultant's Reports or Meetings.

A. Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for Agency's Contract Administrator or Project Coordinator to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

B. Consultant's Project Manager shall meet with Agency's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

6. Prompt Payment Of Withheld Funds To Subconsultants.

The LOCAL AGENCY shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the LOCAL AGENCY fails to pay promptly, the LOCAL AGENCY shall pay interest to the contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the LOCAL AGENCY shall act in accordance with both of the following:

(1) Each payment request shall be reviewed by the LOCAL AGENCY as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.

(2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to CONSULTANT as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

7. Equipment Purchase And Other Capital Expenditures.

A. Prior authorization in writing by Agency's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

B. For purchase of any item, service, or consulting work not covered in Consultant's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by Agency's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.

C. Any equipment purchased with funds provided under the terms of this Agreement is subject to the following:

1. Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, Agency shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, Consultant may either keep the equipment and credit Agency in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established Agency procedures; and credit Agency in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by Agency and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by Agency.

2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

8. Rebates, Kickbacks Or Other Unlawful Consideration.

The Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any Agency employee. For breach or violation of this warranty, Agency shall have the right, in its discretion, to terminate this Agreement without liability, to pay only for the value of the work actually performed, or to deduct from this Agreement price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

9. Funding Requirements.

A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.

B. This Agreement is valid and enforceable only if sufficient funds are made available to Agency for the purpose of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or Agency governing board that may affect the provisions, terms, or funding of this Agreement in any manner.

C. It is mutually agreed that if sufficient funds are not appropriated, this Agreement may be amended to reflect any reduction in funds.

D. Agency has the option to terminate the Agreement pursuant to Article VI Termination, or by mutual agreement to amend the Agreement to reflect any reduction of funds.

10. Inspection Of Work.

Consultant and any subconsultant shall permit Agency, the State, and the FHWA if federal participating funds are used in this Agreement; to review and inspect the project activities and files at all reasonable times during the performance period of this Agreement.

11. Safety.

A. Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by Agency Safety Officer and other Agency representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

B. Pursuant to the authority contained in Vehicle Code §591, Agency has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

12. National Labor Relations Board Certification.

In accordance with Public Contract Code §10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.