



# MEETING AGENDA

## Western Riverside County Programs and Projects Committee

**Time:** 1:30 p.m.  
**Date:** August 22, 2022  
**Location:** BOARD ROOM  
County of Riverside Administration Center  
4080 Lemon St, First Floor, Riverside CA 92501

### COMMITTEE MEMBERS

Ben J. Benoit, **Chair**/Joseph Morabito, City of Wildomar  
Brian Berkson, **Vice Chair**/Guillermo Silva, City of Jurupa Valley  
Wes Speake/Jim Steiner, City of Corona  
Clint Lorimore/Todd Rigby, City of Eastvale  
Linda Krupa/Malcolm Lilienthal, City of Hemet  
Bill Zimmerman/Dean Deines, City of Menifee  
Yxstian Gutierrez/Edward Delgado, City of Moreno Valley  
Ted Hoffman/Katherine Aleman, City of Norco  
Michael Vargas/Rita Rogers, City of Perris  
Kevin Jeffries, County of Riverside, District I  
Karen Spiegel, County of Riverside, District II  
Jeff Hewitt, County of Riverside, District V

### STAFF

Anne Mayer, Executive Director  
Aaron Hake, Deputy Executive Director

### AREAS OF RESPONSIBILITY

Air Quality, Capital Projects, Communications and Outreach Programs, Intermodal Programs, Motorist Services, New Corridors, Regional Agencies/Regional Planning, Regional Transportation Improvement Program (RTIP), Specific Transit Projects, State Transportation Improvement Program (STIP)

Transportation Uniform Mitigation Fee (TUMF) Program, and Provide Policy Direction on Transportation Programs and Projects related to Western Riverside County and other areas as may be prescribed by the Commission.

Comments are welcomed by the Commission. If you wish to provide comments to the Commission, please complete and submit a Speaker Card to the Clerk of the Board.



**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE**

[www.rctc.org](http://www.rctc.org)

**AGENDA\***

*\*Actions may be taken on any item listed on the agenda*

**1:30 p.m.**

**Monday, August 22, 2022**

**BOARD ROOM**

**County Administrative Center  
4080 Lemon Street, First Floor  
Riverside, California**

*In compliance with the Brown Act and Government Code Section 54957.5, agenda materials distributed 72 hours prior to the meeting, which are public records relating to open session agenda items, will be available for inspection by members of the public prior to the meeting on the Commission's website, [www.rctc.org](http://www.rctc.org).*

*In compliance with the Americans with Disabilities Act, Government Code Section 54954.2, Executive Order N-29-20, and the Federal Transit Administration Title VI, please contact the Clerk of the Board at (951) 787-7141 if special assistance is needed to participate in a Committee meeting, including accessibility and translation services. Assistance is provided free of charge. Notification of at least 48 hours prior to the meeting time will assist staff in assuring reasonable arrangements can be made to provide assistance at the meeting.*

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PLEDGE OF ALLEGIANCE**
- 4. PUBLIC COMMENTS** – *Each individual speaker is limited to speak three (3) continuous minutes or less. The Committee may, either at the direction of the Chair or by majority vote of the Committee, waive this three minute time limitation. Depending on the number of items on the Agenda and the number of speakers, the Chair may, at his/her discretion, reduce the time of each speaker to two (2) continuous minutes. Also, the Committee may terminate public comments if such comments become repetitious. In addition, the maximum time for public comment for any individual item or topic is thirty (30) minutes. Speakers may not yield their time to others without the consent of the Chair. Any written documents to be distributed or presented to the Committee shall be submitted to the Clerk of the Board. This policy applies to Public Comments and comments on Agenda Items.*

*Under the Brown Act, the Board should not take action on or discuss matters raised during public comment portion of the agenda which are not listed on the agenda. Board members may refer such matters to staff for factual information or to be placed on the subsequent agenda for consideration.*

5. **ADDITIONS/REVISIONS** *(The Committee may add an item to the Agenda after making a finding that there is a need to take immediate action on the item and that the item came to the attention of the Committee subsequent to the posting of the agenda. An action adding an item to the agenda requires 2/3 vote of the Committee. If there are less than 2/3 of the Committee members present, adding an item to the agenda requires a unanimous vote. Added items will be placed for discussion at the end of the agenda.)*

6. **CONSENT CALENDAR** - *All matters on the Consent Calendar will be approved in a single motion unless a Commissioner(s) requests separate action on specific item(s). Items pulled from the Consent Calendar will be placed for discussion at the end of the agenda.*

**6A. APPROVAL OF MINUTES – JUNE 27, 2022**

**Page 1**

7. **AGREEMENTS FOR FREEWAY SERVICE PATROL TOW TRUCK SERVICE**

**Page 14**

**Overview**

This item is for the Committee to:

- 1) Award Agreement No. 22-45-085-00 to Royal Coaches Auto Body and Towing, LLC for Freeway Service Patrol (FSP) tow truck services on Interstate 215, Beat Nos. 18 and 19, for a five-year term, in the amount of \$3,197,457, plus a contingency amount of \$159,873, for a total amount not to exceed \$3,357,330;
- 2) Award Agreement No. 22-45-102-00 to Royal Coaches Auto Body and Towing, LLC for Freeway Service Patrol (FSP) tow truck services on State Route 91 and I-15 Express Lanes for a five-year term, in the amount of \$7,267,918, plus a contingency amount of \$363,396, for a total amount not to exceed \$7,631,314;
- 3) Approve Agreement No. 17-45-061-05, Amendment No. 5 to Agreement No. 17-45-061-00 with Pepe's Towing (Pepe's) for continued FSP services on Beat 18 & 19 for an additional six months through March 31, 2023 and to increase the hourly rate from \$67.75 to \$84.15. No additional funding is necessary, as the current contract amount is sufficient to cover the increased rate;
- 4) Approve Agreement No. 16-45-103-05, Amendment No. 5 to Agreement No. 16-45-103-00 with Steve's Towing (Steve's) for continued FSP services on the Commission's Express Lanes (Beats 91T and 15T) for an additional two months through March 31, 2023 and to increase the hourly rate from \$70.00 to \$84.00 for an additional amount of \$8,250 and a total amount not to exceed \$2,224,347;
- 5) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements on behalf of the Commission;

- 6) Authorize the Executive Director, or designee, to approve the use of the contingency amount as may be required for these services; and
- 7) Forward to the Commission for final action.

**8. AGREEMENT FOR PREPARATION OF PLANS, SPECIFICATIONS AND ESTIMATE FOR THE MID COUNTY PARKWAY PROJECT CONSTRUCTION PACKAGE NO. 3 ALONG RAMONA EXPRESSWAY**

***Page 113***

***Overview***

This item is for the Committee to:

- 1) Award Agreement No. 23-31-007-00 to Jacobs Engineering Group to prepare plans, specifications, and estimates (PS&E) for the Mid County Parkway Construction Package No. 3 (MCP3) from approximately one mile east of Rider Street to Warren Road along the Ramona Expressway (Project), in the county of Riverside in the amount of \$10,642,182 plus a contingency amount of \$2,357,818 for a total amount not to exceed \$13,000,000;
- 2) Approve the use of \$5,686,000 of state Senate Bill 1 Local Partnership Program (LPP) Formula funds for Project design;
- 3) Approve the use of \$7,314,000 of Transportation Uniform Mitigation Fee - Community Environmental Transportation Acceptability Process (TUMF-CETAP) funds for Project design;
- 4) Approve Cooperative Agreement No. 23-31-004-00 with County of Riverside Transportation and Land Management Agency (CRTLMA) for MCP3 final design, right of way (ROW) acquisition, construction, and maintenance. This agreement includes a \$1,000,000 contribution by CRTLMA to RCTC for the MCP 3 project;
- 5) Approve Agreement Nos. 23-31-005-00 and 23-31-006-00 with Rivers & Land Conservancy and the use of \$1,004,672 of Measure A funds for endowment toward the conservation easement of Sweeney and San Timoteo Canyon mitigation sites;
- 6) Approve the use of \$15,000,000 [\$13,279,500 of Surface Transportation Block Grant Program (STBG) and a match of \$1,720,500 of TUMF-CETAP] for right of way corridor (ROW) preservation within MCP Construction Package 2 (MCP2) limits;
- 7) Authorize the Executive Director, pursuant to legal counsel review, to finalize the conservation easement and endowment mitigation agreements on behalf of the Commission;
- 8) Authorize the Executive Director to make changes between fund types within the total amounts approved by the Commission to facilitate the most efficient use of funds;
- 9) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements on behalf of the Commission;
- 10) Authorize the Executive Director or designee to approve contingency work as may be required for the Project; and
- 11) Forward to the Commission for final action.

**9. EXECUTIVE DIRECTOR REPORT**

**10. COMMISSIONER COMMENTS**

***Overview***

This item provides the opportunity for brief announcements or comments on items or matters of general interest.

**11. ADJOURNMENT**

The next Western Riverside County Programs and Projects Committee meeting is scheduled to be held at **1:30 p.m., Monday, October 24, 2022.**

# **AGENDA ITEM 6A**

## **MINUTES**





# ***RIVERSIDE COUNTY TRANSPORTATION COMMISSION***

## **WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE**

Monday, June 27, 2022

### **MINUTES**

#### **1. CALL TO ORDER**

The meeting of the Western Riverside County Programs and Projects Committee was called to order by Chair Ben J. Benoit at 1:30 p.m., in the Board Room at the County of Riverside Administrative Center, 4080 Lemon Street, First Floor, Riverside, California, 92501.

#### **2. ROLL CALL**

##### **Members/Alternates Present**

Ben Benoit  
Ted Hoffman  
Kevin Jeffries  
Linda Krupa  
Clint Lorimore  
Wes Speake  
Karen Spiegel  
Michael Vargas  
Bill Zimmerman

##### **Members Absent**

Brian Berkson  
Yxstian Gutierrez  
Jeff Hewitt

#### **3. PLEDGE OF ALLEGIANCE**

Commissioner Kevin Jeffries led the Western Riverside County Programs and Projects Committee in a flag salute.

#### **4. PUBLIC COMMENTS**

There were no requests to speak from the public.

#### **5. ADDITIONS/REVISIONS**

There were no additions or revisions to the agenda.

**M/S/C (Vargas/Zimmerman) to approve the minutes as submitted.**

**6. APPROVAL OF MINUTES – MAY 23, 2022**

**7. AGREEMENTS FOR ON-CALL RIGHT OF WAY ENGINEERING AND SURVEYING**

Timothy Green, Senior Management Analyst, presented the on-call right of way (ROW) engineering and surveying services, highlighting the following:

- Background
  - ✓ ROW engineering and surveying services are necessary to support the ROW department
  - ✓ The Commission and the Western Riverside County Regional Conservation Authority (RCA) utilizes these services when acquiring property
- Procurement process
  - ✓ March 24, 2022
    - Request for qualifications (RFQ) was released
  - ✓ April 21, 2022
    - Three firms submitted responsive and responsible statements of qualifications
  - ✓ May 12, 2022
    - Psomas and Guida Surveying were selected as most qualified and interviewed

At this time, Commissioner Clint Lorimore joined the meeting.

Commissioner Ted Hoffman stated that only the one bid from Psomas was listed and asked if the other bid was close to it.

Timothy Green replied they had several bids and narrowed it down to two companies that they brought into the interview process and then based on that staff went to Psomas for the recommendation.

In response to Commissioner Hoffman's inquiry if they knew what the other company's bid was on this, Timothy Green replied no but their bid was not to exceed \$750,000.

Commissioner Hoffman stated he was asking because he prefers to compare with the other company as far as dollarwise and they are going to do this for under \$750,000.

Timothy Green replied yes, and he believes that was RCTC's establishment and there was not a bid by each company.

Anne Mayer stated when it is an architectural or engineering type service it is a combination of qualifications and experience, so it is not based solely on price and generally the final negotiation does not take place until they have selected the consultant.

This is an on-call contract so they are not guaranteed to receive task orders issued in this full amount as RCTC has services staff would need they will issue a task order and get a specific price for that specific task in alignment with their hourly prices that are part of this contract.

**M/S/C (Vargas/Speake) to:**

- 1) Award Agreement No. 22-31-057-00 with Psomas for the on-call right of way engineering and surveying services for a three-year term for an amount not to exceed \$750,000;**
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement, on behalf of the Commission;**
- 3) Authorize the Executive Director, or designee, to execute task orders under the terms of the agreements; and**
- 4) Forward to the Commission for final action.**

**8. AGREEMENTS FOR ON-CALL RIGHT OF WAY ENVIRONMENTAL SITE ASSESSMENT SERVICES**

Angela Ferreira, Senior Management Analyst, presented the on-call ROW environmental site assessment services, highlighting the following:

- Background
  - ✓ The Commission and RCA utilize environmental assessment services when acquiring properties
  - ✓ Comprehensive environmental services
- Procurement process
  - ✓ February 24, 2022
    - Request for Qualifications (RFQ) was released
  - ✓ March 24, 2022
    - Four firms submitted responsive and responsible statements of qualifications
  - ✓ April 14, 2022
    - Dudek, Kleinfelder, Inc., Leighton Consulting, Inc., and Ninyo & Moore, were selected as most qualified and interviewed

**M/S/C (Speake/Spiegel) to:**

- 1) Award Agreement No. 22-31-068-00 with Dudek for the on-call right of way environmental site assessment services for a three-year term in an amount not to exceed \$350,000;**
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement on behalf of the Commission;**
- 3) Authorize the Executive Director, or designee, to execute task orders awarded to the consultant under the terms of the agreement; and**

**4) Forward to the Commission for final action.**

**9. FREEWAY SERVICE PATROL TOW OPERATOR FUEL RELIEF REIMBURSEMENT**

Hanan Swalha, Management Analyst, presented the Freeway Service Patrol (FSP) tow operator fuel relief reimbursement, highlighting the following areas:

- FSP assists motorists and relieves traffic including some feedback received by some of the motorists they assist
- RCTC contracts with tow operators for FSP
  - ✓ Contracts are for five-year terms
  - ✓ Tow operators propose a comprehensive hourly rate inclusive of fuel cost and inflation at the time of the bid
  - ✓ Recent fuel cost surges were unprecedented and outside of the normal hourly rate cost factors
- Fuel costs have surged since 2021 according to the data from the U.S. Energy Information Administration
- Older FSP contracts are more impacted
  - ✓ Impacted contracts proposed for fuel relief are three years or older
  - ✓ Proposed fuel cost at the time of bid was between \$4.00 - \$5.00
  - ✓ Hourly operating rates for these contracts are \$63.96 - \$70.00; for comparison, newer contracts range between \$80.07 - \$89.94
- ✓ Fuel relief calculation
  - ✓ Monthly reimbursement to impacted contracts will be made in two parts:
    - Part I – One-time reimbursement for Fiscal Year 2022 (March 1 through June 30, 2022)
    - Part II - Ongoing monthly payment through the term of the agreement
  - ✓ Payments will be made for any overage above operator proposed fuel cost up to a price of \$8.00 per gallon

Chair Benoit noted to Hanan Sawalha that it was a great presentation, and that the U.S. Energy quote was not needed as all the Commissioners have seen these huge increases in gas prices and it is amazing where this has gone.

Commissioner Spiegel clarified there has been a slow stagnant and some decline recently, so they are just doing as that month is showing its average cost, so for months going forward it is just going to be what that average cost is for the month.

Hanan Sawalha replied the contracts being considered are all older contracts so generally the rates that those operators are receiving tend to be lower than those for more recent contracts. RCTC is offering the operators a reimbursement for any overage above what they proposed at the time of the contract bid, but most of these agreements that are being considered are short-term. She explained the one that is set to expire the latest is in August 2023, so that would be 14 months and is the longest contract receiving a

reimbursement. She stated going forward staff is hoping to implement a more dynamic rate for their future contracts that would help mitigate this issue.

Commissioner Spiegel clarified the ones that are going through FY 2023 and September 2022 is the average monthly increase.

Anne Mayer replied correct based on the federal statics, so they will be looking at what the rate was for that month and calculate the differential for that month.

Commissioner Kevin Jeffries stated he believed that it was the state of California that was going to waive the tax on diesel fuel only and asked if staff will subtract that out of the bonus that they are giving the tow operators. Hanan Sawalha stated that it is not quite a bonus. Commissioner Jeffries replied it is a bonus because the tow operators are getting more than what they contracted for. Hanan Sawalha replied they are going to go off the average fuel rates according to the U.S. Energy Information Administration so that will be their source and that tends to be an average of fuel rates across California.

Anne Mayer stated if the fuel rates for California drop because of the gas tax reimbursement then that would be factored in.

Commissioner Jeffries clarified it was for diesel fuel only from what he read this morning.

Anne Mayer replied yes, they will factor that in.

Commissioner Jeffries stated he is not sure he agrees that this is legal and ethical, but he understands the position the tow operators are in, but they signed a contract and if they do not like the contract then get out of it. He understands RCTC needs the tow operators but expressed they are just going to pay the tow operators to sit under the overpasses where he sees them on Interstate 15 and not driving.

Anne Mayer replied to Commissioner Jeffries the next time he sees a tow operator sitting under the overpass to let staff know. She stated this is a very tough program and there are very few providers of these services out there. She recalled back 20 years ago when this program first started how the Commission had to adjust its program just to be able to get providers to bid on it. It is one of RCTC's most popular programs, most of them are relatively small businesses, and if they do not keep them in business then the service goes away. She noted to Commissioner Jeffries it is completely understandable what he is saying, and this is an abnormal situation as she does not recall that this has been done before.

Chair Benoit clarified that in future contracts this will be accounted for.

Anne Mayer replied staff will have to look at how they structure their contracts in the future but as was pointed out most of their newer FSP contracts are at least \$10.00 more an hour than these older contracts. She suggested part of what staff needs to look at is

shorter-term contracts instead of doing five-year contracts so they will have to evaluate the best way to do this.

Chair Benoit replied a shorter-term contract not only for that but also they might start seeing a transition as he has been on the Air Quality Management Board for 10 years and a lot of this stuff was so far out into the future they did not think it was going to happen. He explained they are finally starting to see some electric trucks that could be used for tow truck services but more importantly Volvo is not producing them in the numbers that could fill this type of a void. At the same time there is Southern California Edison that is trying to connect the power to those trucks, and it is taking up to 18 months so there is no easy fix.

Commissioner Speake concurred with Commissioner Jeffries' comment in that it is not a great situation for the Commission to be in. He stated if they put out new contracts and the fuel factor was figured out at \$7.00 or \$8.00, and fuel goes down to \$3.00 will the Commission be getting money back. He understands it is a volatile commodity and asked if that is something they put in their contracts going forward as he concurred that it is a wonderful service for their residents. The positive feedback received from the motorists that was in the presentation were from the last couple of weeks and stated he hears them all the time but maybe that is something they can do so they do not have to do this.

Anne Mayer stated one of the places staff can look is what has already been done on construction contracts with the price of oil. She explained any contract that has asphalt concrete there is an oil index, it is indexed, there is a standardization for how it is indexed, and it is not part of the base contract as there is a supplemental pay item for it. She noted as oil prices go up and down that item moves up and down and there has been some discussion lately about whether construction contracts should now have steel indexing in it as well. Anne Mayer suggested that is a model they can look at in terms of how they can index fuel prices, so as they go up and down the contract has adjustments and that is where a contingency or supplemental amount comes in, so they need to look at the best way to contract these.

Commissioner Speake asked how they equate miles per gallon for these things and if there is a standard for a tow truck.

Hanan Sawalha replied based on their logged mileage they assume that a gallon of fuel takes a truck 10-14 miles that would depend on the congestion level so for the purpose of this reimbursement they used 12 miles for the midpoint. She explained they currently have a request for proposal (RFP) out and they have implemented a dynamic fuel scale, so they are asking operators to provide bids at various fuel levels up to a \$10.00+ point so that in the future they do not have to do this.

Commissioner Clint Lorimore asked Hanan Sawalha to reiterate how they do the selection process of the tow operators, and does it include if they base it off lowest cost.

Hanan Sawalha replied that is one of the factors. She stated staff has the tow operators' work plan, their overall qualifications, and then pricing as part of that.

In response to Commissioner Lorimore's clarification that pricing includes the fuel, Hanan Sawalha replied generally yes.

Commissioner Lorimore clarified that a contractor comes in with the lowest cost giving a lower fuel calculation, RCTC grants that contractor the award and staff comes back in after the fact and RCTC gives that contractor money to make them whole.

Anne Mayer noted to Commissioner Lorimore that it is not quite the way he outlined it as the tow operator's price per hour is more than just fuel. She explained the price per hour includes the truck, the operator, and all their costs so the costs that come in are more than just fuel. In the history of the FSP since she was either on the Commission as the Governor's Appointee for Caltrans District 8 or here at RCTC, she does not remember something coming to the Commission to pay for increased costs in fuel. There have been a few times where there were some renegotiated prices in the option years, but this is a rarity, the change in fuel costs is significant. She stated typically RCTC will have a contract, and the contract is for three to five years, and they stick with the price of the contract until it is over, and it is only when they recompetes do prices change.

Commissioner Lorimore clarified the Commission will have assurances moving forward that staff will be addressing these calculations so that they do not have this occurrence happen again to the best of staff's abilities.

Anne Mayer replied they have included a dynamic pricing component to the contract. She cannot promise that staff will be able to always predict what is going to happen with an inflation area, the economy, and what is going to happen with gas prices. Staff would do their very best at trying to make sure RCTC's contracts are fair to the people they are contracting with, to obtain the services staff is looking for, and a good expenditure of taxpayer money.

Commissioner Jeffries concurred with Anne Mayer's comment about some of the pricing pressures as it is about to happen to cement plants across the state. He expressed there may not be any cement plants left in California in a few years and everything will be imported from overseas so that will have its own prices and consequences.

Chair Benoit noted that they lost a steel plant recently in San Bernardino. He stated he had toured that plant just months after the new owner bought it and they assured him the plant would be here for decades it was two or three years later, and they are gone. He expressed it is a volatile market at the moment.

**M/S/C (Vargas/Spiegel) to:**

- 1) Authorize one-time payment as fuel relief reimbursement to Pepe's Towing for Freeway Service Patrol (FSP) services on Beats 4, 7, 8 for a total amount of \$6,270 for the months of March through June 2022;**
- 2) Approve Agreement No. 18-45-132-03, Amendment No. 3 to Agreement No. 18-45-132-00, with Coastal Pride Towing for continued FSP services on Beats 20, 34, 35 for an additional amount of \$187,400 for fuel relief reimbursement, including a one-time reimbursement for the months of March through June 2022 and ongoing monthly reimbursements through the term of the agreement ending August 29, 2023, for a total amount not to exceed \$2,652,356;**
- 3) Approve Agreement No. 17-45-061-04, Amendment No. 4 to Agreement No. 17-45-061-00, with Pepe's Towing for continued FSP services on Beats 18, 19 for an additional amount of \$24,750 for fuel relief reimbursement, including a one-time reimbursement for the months of March through June 2022 and ongoing monthly reimbursements through the term of the agreement ending September 30, 2022, for a total amount not to exceed \$4,308,922;**
- 4) Approve Agreement No. 16-45-103-04, Amendment No. 4 to Agreement No. 16-45-103-00, with Steve's Towing for continued FSP services on the express lanes for an additional \$47,900 for fuel relief reimbursement, including a one-time reimbursement for the months of March through June 2022 and ongoing monthly reimbursements through the term of the agreement ending January 31, 2023, or a total amount not to exceed \$2,216,097;**
- 5) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements on behalf of the Commission; and**
- 6) Forward to the Commission for final action.**

**10. MID COUNTY PARKWAY CONTRACT PACKAGE 3 - PROJECT STATUS**

David Lewis, Capital Projects Manager, presented an update for the Mid County Parkway Construction Package 3 (MCP3), highlighting the following areas:

- Update
  - ✓ February 28 Perris sent letter to RCTC with concerns
  - ✓ March 8 to April 18 Staff met with the city and evaluated city proposals and an agreement could not be reached
  - ✓ May 11 Commission approved deferring work on MCP2 and directed staff to coordinate with the County to scope a different construction package on Ramona Expressway, MCP3
  - ✓ May 11 to June 9 Staff worked with County to develop the scope for MCP3
- Project background
  - ✓ 2016 Strategic Assessment – staff directed to study fundable/buildable



- packages
  - ✓ First part: I-215 Placentia Ave Interchange under construction
  - ✓ City widening Placentia Avenue, Indian Avenue to Redlands Avenue
  - ✓ MCP part 3: 2 new lanes, one in each direction, with safety measures for median accident
- Project scope
  - ✓ A map that shows the alignment of MCP3
  - ✓ Project limits west of Pico Ave to Warren Road along Ramona Expressway
  - ✓ Proposed Improvements – restripe existing Ramona Express to two lanes in west bound direction, two new east bound lanes plus a median, median barriers along the corridor, a new bridge over the San Jacinto River, and several traffic signals
- Project implementation
  - ✓ Funding
    - Reprogram \$5,686,000 of Local Partnership Program (LPP) funds from MCP2 to MCP3
    - The California Transportation Commission (CTC) to take action at August 2022 meeting
    - Remaining funding will be from local sources
  - ✓ Plans, specifications, and estimate (PS&E) development
    - Competitive procurement process completed for MCP2 PS&E Consultant Selection
    - MCP2 scope is similar to MCP3, project footprint only shifted
    - To address the significant safety concerns and need to implement the project as soon as possible:
      - Staff will recommend the award of the MCP3 PS&E to the consultant selected from the MCP2 PS&E procurement process at the September commission meeting
      - Staff is identifying tasks to be completed under existing contracts prior to award of PS&E design
- MCP3 scope implementation
  - ✓ County partnership
    - MCP3 will be a County facility, provide operations and maintenance upon completion
    - Cooperative agreement between County and RCTC under development and to be presented at the September commission meeting
      - Agreement includes details on how project will proceed through design, construction, and final acceptance
      - County to provide \$1,000,000 in funding for the project
      - Agreement includes language for RCTC to recover costs if County were to withdraw support for the project
  - ✓ ROW funding for MCP2
    - Commission programmed \$36,939,000 of Surface Transportation Block Grant (STBG) federal fund for ROW acquisition on MCP2

- \$21,939,000 to be reprogrammed to MCP3
  - Approximately \$15,000,000 to remain on MCP2 to purchase parcels which are in imminent risk of development
- Next steps
  - ✓ Return to the September Commission meeting to recommend reprogram funding to support MCP3 design
  - ✓ Return to the September Commission meeting to recommend awarding contract to the successful consultant for the MCP2 PS&E design contract for use on MCP3
  - ✓ Complete the cooperative agreement negotiations with the County and return to the September Commission meeting to recommend approval
  - ✓ Maintain ROW funding on MCP2 to purchase parcels in risk of development

Anne Mayer stated staff normally does not bring agenda items that do not require any committee decisions as it was just an update but given the significant attention paid to this topic for the past several months staff wanted to make sure the Commissioners were aware they are making progress on the project. She explained they are developing the scope, there is a financial plan in place, it is not all ready for the Commissioners but at its August 22 Western Riverside County Programs and Projects Committee meeting staff will bring the full package for the Commissioners' consideration and if approved it will go to its September 14 Commission meeting. She expressed appreciation the CTC staff has agreed to allow RCTC to reprogram the funding from one segment to the other and it is important that staff does not ask this Commission to make any decisions before the CTC approves that funding allocation as well.

Commissioner Linda Krupa expressed appreciation for this information and for the way this committee and the Commission has responded to this and the priority that it has been given. She stated anything with MCP, and the realignment of SR-79 is near and dear to her heart and to all the people that live in San Jacinto Valley. She asked about the median and median barriers if they are the six-inch type that Caltrans puts in that does not really stop the cars or the k-rail that is on SR-79 through Lamb Canyon that does stop cars from crossing over.

Anne Mayer replied it might be both. She stated that part of the design process will be evaluating the areas where there may be need for left turn pockets as there are several dairy farms along that area. Some sections may require a median curve where there is left turn pockets or other things and then other areas will have barriers, but that will be part of the design process.

Commissioner Krupa asked with the project being changed from state supervision to County maintenance if it stops future designation of a regional arterial or a state highway.

Anne Mayer replied it does not stop future designation as a regional arterial. She explained the question of it ever being a state highway this would not stop that, but the fact that MCP will be built over such a length of time would mean the local jurisdiction would need to maintain all those built sections of MCP until the whole project is built and then ask Caltrans to take it at the end, which could be years. By the time all those years go by then they would probably have to go back and rehabilitate it and bring it completely up to Caltrans' standards before they take it. The other aspect of doing this as a county road is that it is to County standards so they would not have to build it to Caltrans' standards, and it will not have to go through Caltrans reviews and approvals. Anne Mayer explained the original idea was to build this as a facility that Caltrans could take and now it is probably more economically feasible if it is a more local road or regional arterial under the control of local elected officials.

Commissioner Krupa expressed appreciation for Anne Mayer's comments and to staff for doing this.

Commissioner Bill Zimmerman expressed appreciation for the update on this project as they were hoping for some good news and making some progress on something that a lot of the Commissioners felt was a little bit of a disappointment. He asked about the rationale for leaving \$15 million in ROW acquisition money for a project that may or may never happen.

David Lewis replied it is very important since RCTC has the environmental document that cleared that footprint from the previous MCP and if they ever decide to come back and do any future improvements, it is in the Commission's best interest now to purchase those properties before they get redeveloped. The cost would be significantly less now than in the future if they got redeveloped and he referred to Anne Mayer to respond.

Anne Mayer stated it is something that staff wants the Commissioners' input and direction on as David Lewis mentioned there are some core parcels for MCP that are probably going to be developed in the near future. She explained if the developments proceed then that means if they ever want to go back to that section and want to build MCP now this Commission is buying the property and relocating the businesses. From staff's standpoint the investment now in purchasing the property when it is vacant leaves the door open, and should the Commission ever decide it is not proceeding it is still land the Commission owns and it could surplus and sale.

Commissioner Hoffman stated it has been a couple of years since he has been out there at Ramona Expressway east of Warren Road if it is developed enough to have four lanes. He understands it is in the city of San Jacinto and asked if they have approved their side of it as he does not want to have a lot of traffic just dumping into a two-lane road.

David Lewis replied that is a concern and the way they described the end of the limits that is where it kind of tapers into two lanes so it really will ultimately help the traffic if it goes from four lanes into four lanes at end to end of Warren Road. He stated what would ultimately help that pinch point is if there were four lanes obviously going into four lanes and noted that he cannot comment on the development of that particular area.

Commissioner Hoffman suggested they can work with the city of San Jacinto and see what their plans are for the future because it is going to impact the city of San Jacinto and the people using that. David Lewis concurred with Commissioner Hoffman's comments.

Commissioner Jeffries clarified getting all the acronyms correct that are in this staff report and he read the acronyms. David Lewis replied it sounds about right.

Commissioner Spiegel explained this is a good compromise to the situation as she was talking to Commissioner Jeffries this morning about the number of accidents in this area, so this is going to be a win for the County. She stated the \$15 million that was set aside for ROW that is still challenging and as most of the Commissioners are aware that she has been very vocal about this. Commissioner Spiegel noted that her staff member went to be the assistant city manager over at the city of Perris so she will now be quiet.

**M/S/C to:**

- 1) Receive and file an update on project planning and scoping with the county of Riverside (County) regarding Mid County Parkway Contract Package 3 (MCP3) since the May 11, 2022, Commission meeting; and**
- 2) Forward to the Commission for final action.**

## **11. EXECUTIVE DIRECTOR REPORT**

Anne Mayer announced:

- The 71/91 Connector Project is advertised for construction they are already receiving questions and comments from potential bidders and had a couple of requests to give them more time. There is a lot of excitement out in the industry for this project it is a big project that includes a lot of steel and lumber, so the team has done a good job with the cost estimate, but it is going to be competitive.
- At its June Commission meeting there was discussion about forming a CV Rail Ad Hoc Committee and some of the Commissioners had volunteered. She noted staff is trying to get that first ad hoc meeting scheduled for the same day as its July 13 Commission meeting.
- Regarding the legislative activity there were three bills that were a hot topic at its June Commission meeting. AB 2237 by Assembly Member Friedman that would

have imposed on self-help sales tax measures. This bill will not be going to the Senate Transportation Committee on June 28, and it is likely not going to be resurrected again this year, but staff will keep track of it. A lot of work has been done on that bill to help folks understand how detrimental it could be to sales tax measures. The two other bills AB 1778 by Assembly Member Garcia, that would restrict the ability for Caltrans to spend any state money in certain areas in the state that meet certain public health indicators it is going to Committee on June 28 as is AB 2438 by Assembly Member Friedman. There was discussion at its June Commission meeting about having some of the Commissioners reach out to their colleagues either in the Assembly or the Senate Delegations, but they are going on recess at the end of this week. If those bills get out of Senate Transportation Committee, they will have to go to another Senate Committee when the Assembly and Senate Delegations comes back, they will not go to the floor until the end of July or in August so staff may reach out to some of the Commissioners. Staff is pleased with the progress or lack of progress with some of these bills.

- The goal is for the Commission to be dark in August, which means the Western Riverside County Programs and Projects Committee meeting will be canceled in July. Although it is still on schedule just in case something urgent comes up.

## **12. COMMISSIONER COMMENTS**

There were no Commissioner comments.

## **13. ADJOURNMENT**

There being no further business for consideration by the Western Riverside County Programs and Projects Committee, the meeting was adjourned at 2:22 p.m.

Respectfully submitted,



Lisa Mobley  
Administrative Services Manager/  
Clerk of the Board



# **AGENDA ITEM 7**





<b><i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i></b>	
<b>DATE:</b>	August 22, 2022
<b>TO:</b>	Western Riverside County Programs and Projects Committee
<b>FROM:</b>	Brian Cunanan, Commuter & Motorist Assistance Manager
<b>THROUGH:</b>	David Knudsen, External Affairs Director
<b>SUBJECT:</b>	Agreements for Freeway Service Patrol Tow Truck Service

**STAFF RECOMMENDATION:**

This item is for the Committee to:

- 1) Award Agreement No. 22-45-085-00 to Royal Coaches Auto Body and Towing, LLC for Freeway Service Patrol (FSP) tow truck services on Interstate 215, Beat Nos. 18 and 19, for a five-year term, in the amount of \$3,197,457, plus a contingency amount of \$159,873, for a total amount not to exceed \$3,357,330;
- 2) Award Agreement No. 22-45-102-00 to Royal Coaches Auto Body and Towing, LLC for Freeway Service Patrol (FSP) tow truck services on State Route 91 and I-15 Express Lanes for a five-year term, in the amount of \$7,267,918, plus a contingency amount of \$363,396, for a total amount not to exceed \$7,631,314;
- 3) Approve Agreement No. 17-45-061-05, Amendment No. 5 to Agreement No. 17-45-061-00 with Pepe's Towing (Pepe's) for continued FSP services on Beat 18 & 19 for an additional six months through March 31, 2023 and to increase the hourly rate from \$67.75 to \$84.15. No additional funding is necessary, as the current contract amount is sufficient to cover the increased rate;
- 4) Approve Agreement No. 16-45-103-05, Amendment No. 5 to Agreement No. 16-45-103-00 with Steve's Towing (Steve's) for continued FSP services on the Commission's Express Lanes (Beats 91T and 15T) for an additional two months through March 31, 2023 and to increase the hourly rate from \$70.00 to \$84.00 for an additional amount of \$8,250 and a total amount not to exceed \$2,224,347;
- 5) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements on behalf of the Commission;
- 6) Authorize the Executive Director, or designee, to approve the use of the contingency amount as may be required for these services; and
- 7) Forward to the Commission for final action.

**BACKGROUND INFORMATION:**

In 1986, the Commission established itself as the Riverside County Service Authority for Freeway Emergencies (RC SAFE) after the enactment of SB 1199 in 1985. The purpose of the formation of SAFEs in California was to provide call box services and, with excess funds, provide additional

motorist aid services. Funding for RC SAFE is derived from a one dollar per vehicle registration fee on vehicles registered in Riverside County. Initially, these funds were used only for the call box program. As additional motorist aid services were developed, SAFE funds were also used to provide FSP and traveler information services as part of a comprehensive motorist aid system in Riverside County.

In 1990, Proposition C was passed to fund transportation improvements and to help reduce traffic congestion in California. From this, the FSP program was created by Caltrans, which developed the corresponding Local Funding Allocation Plan to distribute funds to participating jurisdictions. In addition to funding received from Caltrans, agencies are required to contribute a 25 percent local match. For the Commission, SAFE revenues are used to meet this match requirement.

The Commission, acting in its capacity as the RC SAFE, is the principal agency in Riverside County, in partnership with Caltrans and the California Highway Patrol (CHP), managing the FSP program. The purpose of the FSP program is to provide a continuously roving tow services patrol along designated freeway segments (referred to as beats) to relieve freeway congestion and facilitate the rapid removal of disabled vehicles and those involved in minor accidents on local freeways. Contracts to provide FSP tow service are competitively bid as needed for each service area. Currently, the Commission contracts with three tow truck operators to provide service on a total of twelve beats Monday through Friday during the peak commute hours, 5:30 a.m. to 8:30 a.m. and 2:30 p.m. (12:30 p.m. on Fridays) to 6:30 p.m. In addition, select beats also have mid-day and weekend service. The Commission contracts with one tow truck operator for Express Lane FSP services on the SR-91 and I-15 facilities; a seven-day a week operation. In Fiscal Year 2021/22, FSP performed nearly 55,000 general purpose lane assists and nearly 1,700 Express Lane assists.

### **DISCUSSION:**

In March 2022, an RFP for two contract service areas, Interstate 215 (Beats 18 & 19) and Express Lanes FSP (SR-91 & I-15), was released; however, only one bid was received for each service area at significantly high rates relative to current market rates. In the interest of the Commission, staff cancelled the procurement and subsequently performed enhanced outreach ahead of the re-release of the RFP in an effort to garner more competition and more competitive bids. In June 2022, staff re-released the RFP for the Beat 18/19 and Express Lane contract service areas.

Staff sought a competitive solution to award tow contracts to qualified firms to cover FSP service areas comprised of two beats on I-215 and the SR-91 and I-15 Express Lanes.

<b>Contract FSP Service Area</b>	<b>Description of Service Area</b>	<b>Number of Tow Trucks</b>
Beat 18 & 19	<ul style="list-style-type: none"> <li>• Beat 18: I-215 from Riverside County line to Central Ave.</li> <li>• Beat 19: I-215 from Alessandro to SR-74/W 4th St.</li> </ul>	3 primary (+1 backup truck)
Express Lanes	<ul style="list-style-type: none"> <li>• Express Lanes on SR-91 from Orange County line to McKinley Street, I-15 Connectors to Ontario Avenue or Sixth Street</li> <li>• Express Lanes on Interstate I-15 from San Bernadino County line to Cajalco Road, Connectors to 91 Express Lanes</li> </ul>	3 primary (+1 backup truck)

### **Procurement Process**

Outreach was conducted prior to the release of the RFP. Flyers offering one-on-one information sessions with RCTC and CHP were distributed to over 150 tow operators by mail and email. Six tow operators requested information sessions, while staff answered questions from several operators via email or phone. RFP No. 22-45-085-00 was released on June 17, 2022. The RFP was posted on the Commission's PlanetBids website, which is accessible through the Commission's website. Utilizing PlanetBids, emails were sent to 49 firms, 23 of which are located in Riverside County. Through the PlanetBids site, 12 firms downloaded the RFP; 2 of these firms are located in Riverside County. A pre-proposal conference was held on June 23, 2022. Staff responded to all questions submitted by potential proposers prior to the July 5, 2022, clarification deadline date. Two firms – Royal Coaches Auto Body and Towing (Baldwin Park) and Pepe's Towing Service Inc. (Colton) – submitted responsive proposals for the Beats 18 & 19 contract service area prior to the 2:00 p.m. submittal deadline on July 21, 2022. Three firms – Royal Coaches Auto Body and Towing (Baldwin Park), Pepe's Towing Service Inc. (Colton) and Pomona Valley Towing (Pomona) – submitted responsive proposals for the Express Lanes contract service area prior to the 2:00 p.m. submittal deadline on July 21, 2022. Utilizing the evaluation criteria set forth in the RFP, the proposals were evaluated and scored by an evaluation committee comprised of the CHP Inland Division, San Bernardino County Transportation Authority, and Commission staff.

The evaluation criteria included qualifications of the firm, staffing/project organization, work plan, and price. Non-price factors accounted for 70 percent of the total score and price (i.e. tow rates proposed) accounted for the remaining 30 percent of the score.

In response to the recent volatility of diesel fuel prices and to mitigate future fuel rate uncertainty, a new dynamic tow rate will be used that adjusts with the diesel fuel price. This dynamic tow rate helps alleviate risks on the operator when fuel rates increase and also adjusts downwards to more favorable rates for the Commission when fuel prices are lower. As such, the

RFP included a price proposal template asking bidders to submit rates that correspond to ranges of average diesel fuel prices, as shown below:

<b>Price Proposal Table:</b>	
<b>Rate Level #</b>	<b>Average Diesel Fuel Cost Per Gallon (per EIA)</b>
1	\$0.01 - \$2.99
2	\$3.00 - \$3.99
3	\$4.00 - \$4.99
4	\$5.00 - \$5.99
5	\$6.00 - \$6.99
6	\$7.00 - \$7.99
7	\$8.00 - \$8.99
8	\$9.00 - \$9.99
9	\$10.00+

The average of the proposed hourly rates, across the nine rate levels, was used to determine the bidders' cost score.

Bidders submitted separate bids for Beat No. 18/19 and the Express Lanes service areas. Bids for each service area were evaluated independently by the evaluation committee. Based on the evaluation committee's assessment of the written proposals and pursuant to the terms of the RFP, the evaluation committee shortlisted and invited two firms, Royal Coaches Auto Body and Towing and Pepe's Towing, to the interview phase of the evaluation and selection process for the Beat 18/19 service area contract. Based on the evaluation committee's assessment, of the proposals submitted for the Express Lanes service area contract, only Royal Coaches was shortlisted and interviewed. Virtual interviews were conducted on August 8, 2022.

Accordingly, the evaluation committee provided final scoring based on a comprehensive evaluation of each written proposal and interview. Based on the evaluation committee's assessment, the evaluation committee recommends contract award to Royal Coaches Auto Body and Towing for the two available service areas, as this firm submitted responsive and responsible proposals and earned the highest total evaluation scores. The contract awards are as follows:

- a) Interstate-215, Beat Nos. 18 and 19 service area for a five-year term, in the amount of \$3,197,457, plus a contingency amount of \$159,873, for a total amount not to exceed \$3,357,330, as this firm earned the highest total evaluation score; and
- b) Express Lanes FSP service area for a five-year term, in the amount of \$7,267,918, plus a contingency amount of \$363,396 for a total amount not to exceed \$7,631,314.

The proposed five-year contract rates and evaluation rankings for all firms are presented in the following tables:

Interstate 215 – Beat Nos. 18 and 19		
Firm	Average Tow Rates: Years 1-2/ Year 3-4/ Year 5	Evaluation Ranking
Royal Coaches Auto Body and Towing	\$103.95/ \$109.78/ \$113.55	1
Pepe's Towing	\$119.62/ \$125.29/ \$132.78	2

State Route 91 and Interstate 15 – Express Lanes		
Firm	Average Tow Rates: Years 1-2/ Year 3-4/ Year 5	Evaluation Ranking
Royal Coaches Auto Body and Towing	\$124.64/ \$131.93/ \$135.85	1
Pepe's Towing	\$188.34/ \$204.85/ \$215.42	2
Pomona Valley Towing	\$134.43/ \$147.92/ \$158.27	3

The rates above reflect the average rate across the nine rate levels quoted. The actual hourly tow rate level applied (1 through 9) will be adjusted for each quarter based on the previous quarter's average cost of diesel fuel as reported by the United States Energy Information Administration (EIA), California No 2 Diesel Retail Prices (dollars per gallon).

#### **Agreement Extensions for Existing Contractors**

The current FSP contracts for Beat 18/19 with Pepe's and for Express Lanes with Steve's expire on September 30, 2022 and January 31, 2023, respectively. The cancellation of the original RFP and subsequent re-release did net more favorable contract awards; however, the timing for contract transitions has been pushed and further compounded by ongoing supply chain issues. As such, extensions with the current contracts will need to be secured in order to maintain continuous FSP services.

The current contract for Beats 18/19 and the Express Lanes are over four years old. The tow operators who currently hold these contracts are willing to extend the contracts to help avoid interruption of FSP services on these beats, subject to increased hourly rates. Staff is recommending the following contract extensions and adjusted negotiated rates to help bridge the gap between the expiring contracts and the start of the newly awarded contracts.


Operator	Service Area	Agreement No.	Current Expiration	Extension Date	Current Hourly Rate	Extension Hourly Rate
Pepe's Towing	Beat 18/19	17-45-061-00	September 2022	March 2023	\$67.75	\$84.15
Steve's Towing	Express Lanes	16-45-103-00	January 2023	March 2023	\$70.00	\$84.00

The increased rates for the extension of service will supersede the fuel relief approved for this contract.

The Commission's standard form FSP services agreements will be entered into with the consultants subject to any changes approved by the Executive Director and pursuant to legal counsel review. Staff also recommends that the Executive Director, or designee, approve the use of the contingency amount as may be required for these services.

**FISCAL IMPACT**

Sufficient funding, consisting of Caltrans, SAFE funds and Enterprise Toll revenues (I-15 and SR-91), for towing services is included in the proposed FY 2022/23 budget.

Financial Information					
In Fiscal Year Budget:	Yes N/A	Year:	FY 2022/23 FY 2023/24+	Amount:	781,722 \$10,215,172
Source of Funds:	State of California, SAFE funds, Toll Revenues			Budget Adjustment:	No N/A
GL/Project Accounting No.:	002173 81014 00000 0000 201 45 81002 009199 81014 00000 0000 591 31 81002 001599 81014 00000 0000 515 31 81002				
Fiscal Procedures Approved:				Date:	08/11/2022

**Attachments:**

- 1) Draft FSP Agreement No. 22-45-085-00 with Royal Coaches Auto Body and Towing
- 2) Draft FSP Agreement No. 22-45-102-00 with Royal Coaches Auto Body and Towing
- 3) Draft FSP Amendment No. 17-45-061-05 with Pepe's Towing
- 4) Draft FSP Amendment No. 16-45-103-05 with Steve's Towing

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION, ACTING AS THE RIVERSIDE  
COUNTY SERVICE AUTHORITY FOR FREEWAY EMERGENCIES,  
FOR  
FREEWAY SERVICE PATROL FOR BEAT # 18 and 19 WITHIN RIVERSIDE COUNTY  
WITH ROYAL COACHES AUTO BODY AND TOWING**

**1. PARTIES AND DATE.**

1.1 This Agreement is made and entered into as of \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("COMMISSION") acting as the RIVERSIDE COUNTY SERVICE AUTHORITY FOR FREEWAY EMERGENCIES ("SAFE") and **ROYAL COACHES AUTO BODY AND TOWING**, a California corporation (referred to herein as "CONTRACTOR"). SAFE and CONTRACTOR are sometimes individually referred to herein as "Party" and collectively as "Parties".

1.2 The California Highway Patrol herein referred to as "CHP" and California Department of Transportation, herein referred to as "Caltrans" are hereby expressly designated as third-party beneficiaries of CONTRACTOR's performance under this Agreement.

**2. RECITALS.**

- 2.1 **WHEREAS**, COMMISSION is a California County Transportation Commission existing under the authority of Section 130050 et seq. of the California Public Utilities Code;
- 2.2 **WHEREAS**, COMMISSION is authorized, pursuant to Section 2550 et seq. of the California Streets and Highways Code, to act as SAFE for purposes of providing a motorist aid system, including provision of freeway service patrols;
- 2.3 **WHEREAS**, SAFE requires the services of a CONTRACTOR to provide the freeway service patrol professional services as described in the Scope of Services;
- 2.4 **WHEREAS**, SAFE has determined that CONTRACTOR is best qualified to perform the required services;
- 2.5 **WHEREAS**, the CONTRACTOR is able and willing to perform the required services under the terms and conditions of this Contract;
- 2.6 **WHEREAS**, COMMISSION is the short range transportation planning agency for Riverside County, and programs federal, state, and local funds. COMMISSION has entered into a Memorandum of Understanding with

Caltrans and CHP to fund peak period freeway service patrols on selected freeway segments in Riverside County; and

- 2.7 **WHEREAS**, Section 21718 (a) of the California Vehicle Code specifically authorized CHP to be responsible for freeway service patrols stopping on freeways for the purpose of rapid removal of impediments to traffic. Article 3, Section 91, of the Streets and Highways Code, states that Caltrans has responsibility to improve and maintain the state highways. Caltrans also has the responsibility for traffic management and removing impediments from the highways.

NOW, THEREFORE, for the consideration hereinafter stated, SAFE and CONTRACTOR agree as follows:

### 3. TERMS.

3.1 General Scope of Services. The purpose of the Freeway Service Patrol ("FSP") program is to provide for the rapid removal of disabled vehicles and vehicles involved in minor accidents from the freeway. Contractor promises and agrees to furnish to SAFE all labor materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately provide the FSP services ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules and regulations, and the SOP manual (as defined below).

3.1.1. Contract Oversight. Caltrans and CHP will jointly oversee the Services. Both agencies will have responsibility for overseeing Service performance and ensuring that the CONTRACTOR abides by the terms of this Contract. CHP is responsible for dispatch services to incident locations within the CONTRACTOR's patrol limits. The dispatching will be done in accordance with this Contract. A Standard Operating Procedures ("SOP") manual will be given to the CONTRACTOR explaining the types of incidents to which his/her operators may be dispatched.

3.1.2 Beat Descriptions. The FSP will operate on selected freeway segments referred to herein as "beats". Each beat has specific turnaround locations and designated drop locations identified by the CHP. Exhibit "A" shows the specific limits, number of tow trucks, number of back-up trucks and hours of operation, and holidays for the CONTRACTOR's specific beat. SAFE reserves the right to add or delete holidays to the work schedule, provided that SAFE provides CONTRACTOR seven (7) days advanced notice of such addition or deletion. Travel time to and from the beat will be at the expense of the CONTRACTOR.

3.1.3 Change Orders. At any time during the term of this Contract, SAFE reserves the right to adjust beat specifications to better accommodate demand for the Services, or availability of funding, at no cost to SAFE. Adjustments may include reduction in the hours



of Services. SAFE may direct such adjustments during the course of this Contract through written change orders, signed by SAFE, setting forth any changes to Exhibit "A". Changes may include a change of the specified beat(s) to other beats that SAFE determines better serve the needs of SAFE, as well as changes to schedules and hours for the beats set forth in Exhibit "A". If warranted, as determined in SAFE's sole discretion, and during the hours of operation of the Services, the CONTRACTOR may be requested to temporarily reassign his/her FSP operators/trucks to locations outside the assigned beat. Such reassignments shall be at no cost to SAFE.

3.1.4. The SOP Manual. To promote a safe work environment and for the maintenance of professionalism, the most current version of the SOP manual shall, at all times, be followed by the CONTRACTOR and its vehicle operators. The SOP manual, as such manual may from time to time be amended, is incorporated into this Contract by reference. CONTRACTOR shall be notified and provided with a copy of any changes to the SOP manual. Drivers found not to be in compliance with FSP procedures, as set forth in the SOP manual or this Contract, may be suspended or terminated from the FSP program and the CONTRACTOR may be fined three (3) times the hourly Contract rate in one (1) minute increments until a replacement vehicle is provided (Driver and Truck must return to beat compliant with all FSP requirements), or fined for the entire shift at three (3) times the hourly rate at the discretion of the FSP Field Supervisors.

3.2 Equipment Requirements. CONTRACTOR shall comply with all equipment requirements outlined in the attached Exhibit "A".

3.3 Commencement of Services. The CONTRACTOR shall commence work upon receipt of a written Notice to Proceed from SAFE.

3.4 Term. The term of this Contract shall be for a period of five (5) years, from **April 3, 2023** to **March 31, 2028** unless earlier terminated as provided herein. SAFE shall also have the right to renew this Contract from one month up to a one (1) year term after the initial term by providing notice as provided below. SAFE must provide written notice to CONTRACTOR no less than ninety (90) days prior to the end of the applicable term, indicating its renewal of the Contract. CONTRACTOR shall complete the Services within the term of this Contract, and shall meet any other established schedules and deadlines. All applicable indemnification provisions of this Contract shall remain in effect following the termination of this Contract. The rates shall be as follows:

#### SCHEDULE OF HOURLY RATES

<b>Classification</b>	<b>Years 1-2</b>	<b>Year 3-4</b>	<b>Year 5</b>
Regular Rate	\$ 103.95 per hour	\$ 109.78 per hour	\$ 113.55 per hour
CFSP/Extra Rate	\$ 114.39 per hour	\$ 120.68 per hour	\$ 124.90 per hour

3.5 SAFE's Representative. SAFE hereby designates the SAFE Executive Director or his or her designee, to act as its Representative for the performance of this Contract

("SAFE's Representative"). SAFE's Representative shall have the authority to act on behalf of SAFE for all purposes under this Contract. SAFE's Representative shall also review and give approval, as needed, to the details of CONTRACTOR's work as it progresses. CONTRACTOR shall not accept direction or orders from any person other than the SAFE's Representative or his or her designee.

3.6 CONTRACTOR'S Representative. CONTRACTOR hereby designates **WILLIAM SALAZAR, PRESIDENT AND CEO**, to act as its representative for the performance of this Contract ("CONTRACTOR's Representative"). CONTRACTOR's Representative shall have full authority to act on behalf of CONTRACTOR for all purposes under this Contract. The CONTRACTOR's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Contract. CONTRACTOR shall work closely and cooperate fully with SAFE's Representative and any other agencies which may have jurisdiction over or an interest in the Services. CONTRACTOR's Representative shall be available to the SAFE staff at all reasonable times. Any substitution in CONTRACTOR's Representative shall be approved in writing by SAFE's Representative.

3.7 Substitution of Key Personnel. CONTRACTOR has represented to SAFE that certain key personnel will perform and coordinate the Services under this Contract. Should one or more of such personnel become unavailable, CONTRACTOR may substitute other personnel of at least equal competence upon written approval by SAFE's Representative. In the event that SAFE's Representative and CONTRACTOR cannot agree as to the substitution of the key personnel, SAFE shall be entitled to terminate this Contract for cause, pursuant to the provisions of Section 3.15. The key personnel for performance of this Contract are: **JUAN PEREZ, FSP PROGRAM MANAGER.**

3.7.1 Availability of FSP Manager. Except in the case of unpreventable circumstances, the FSP Manager must be available at the CONTRACTOR's office for at least 50% of each Work Day to address time sensitive issues related to this Contract or the Services, including, but not limited to, FSP administrative responsibilities; SAFE, CHP, and Caltrans requests; driver matters; and truck maintenance issues. CONTRACTOR shall, within 24 hours, notify SAFE of each circumstance causing the FSP Manager not to be available as required herein. As used in this section, the term "Work Day" shall mean and refer to any day that FSP service is provided, during those hours of operation for Construction FSP as identified on the attached Exhibit "A-1".

3.8 Review of Work and Deliverables. All reports, working papers, and similar work products prepared for submission in the course of providing Services under this Contract may be required to be submitted to SAFE's Representative in draft form, and SAFE's Representative may require revisions of such drafts prior to formal submission and approval. In the event that SAFE's Representative, in his or her sole discretion, determines the formally submitted work product to be inadequate, SAFE's Representative may require CONTRACTOR to revise and resubmit the work at no cost to SAFE. Upon determination by SAFE that CONTRACTOR has satisfactorily completed the Services required under this Contract and

within the term set forth in Section 3.4, SAFE shall give CONTRACTOR a written Notice of Final Completion. Upon receipt of such notice, CONTRACTOR shall incur no further costs hereunder, unless otherwise specified in the Notice of Completion. CONTRACTOR may request issuance of a Notice of Final Completion when, in its opinion, it has satisfactorily completed all Services required under the provisions of this Contract.

3.9 Appearance at Hearings. If and when required by SAFE, CONTRACTOR shall render assistance at public hearings or other meetings related to the performance of the Services.

3.10 Standard of Care: Licenses. CONTRACTOR represents and maintains that it is skilled in the professional calling necessary to perform all Services, duties and obligations required by this Contract. CONTRACTOR shall perform the Services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. CONTRACTOR warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. CONTRACTOR further represents and warrants to SAFE that its employees and subcontractors have all licenses, permits, qualifications (including medical certification) and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Contract. CONTRACTOR shall perform, at its own cost and expense and without reimbursement from SAFE, any services necessary to correct errors or omissions which are caused by the CONTRACTOR's failure to comply with the standard of care provided for herein, and shall be fully responsible to SAFE for all damages and other liabilities provided for in the indemnification provisions of this Contract arising from the CONTRACTOR's errors and omissions. Any employee of CONTRACTOR or its subcontractors who is determined by SAFE to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to SAFE, shall be promptly removed from performing the Services by the CONTRACTOR and shall not be re-employed to perform any of the Services.

3.11 Opportunity to Cure. SAFE may provide CONTRACTOR an opportunity to cure, at CONTRACTOR's expense, all errors and omissions which may be disclosed during performance of the Services. Should CONTRACTOR fail to make such correction in a timely manner, such correction may be made by SAFE, and the cost thereof charged to CONTRACTOR.

3.12 Inspection of Work. CONTRACTOR shall allow SAFE's Representative to inspect or review CONTRACTOR's performance of Services in progress at any time. SAFE/Caltrans/CHP also reserves the right to audit all paperwork demonstrating that CONTRACTOR participates in an employee alcohol/drug-testing program and the DMV Pull Notice Program.

3.13 Laws and Regulations. CONTRACTOR shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. CONTRACTOR shall be solely liable for all violations of such laws

and regulations in connection with Services. If the CONTRACTOR performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to SAFE, CONTRACTOR shall be solely responsible for all costs arising therefrom. CONTRACTOR shall defend, indemnify and hold SAFE, their officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.14 Damage Complaints. Upon receiving a damage complaint from a motorist assisted by the CONTRACTOR, that the CONTRACTOR damaged their vehicle while lending assistance, the CONTRACTOR shall notify CHP immediately regarding the nature of the damage complaint and its disposition. The CONTRACTOR shall reply to the motorist by telephone within twenty-four (24) hours of receiving the damage complaint notification. If necessary, the CONTRACTOR shall send either his or her authorized representative or his or her insurance company representative to inspect the vehicle and complete an incident report within forty-eight (48) hours after receiving the damage complaint. If the investigation shows that damage to the vehicle could have been caused by the CONTRACTOR, the CONTRACTOR shall negotiate in good faith to try and resolve the issue and shall report to the CHP the result of the negotiations. All complaints shall be resolved within a reasonable period of time after being received.

3.14.1 Complaint Review Committee. The FSP Technical Advisory Committee ("FSP TAC") is composed of voting members from CHP, SAFE and Caltrans. Voting members of the FSP TAC are hereby designated as the members of the Damage Complaint Review Committee ("DCRC"). If the DCRC finds that justifiable complaints are not resolved within a reasonable time frame, it can recommend that payment to the CONTRACTOR in the amount of the damage claim may be deducted from the CONTRACTOR's monthly invoice.

3.15 Termination.

3.15.1 Notice; Reason. SAFE may, by written notice to CONTRACTOR, terminate this Contract, in whole or in part, including, without limitation, the geographical territory covered by this Contract, at any time by giving written notice to CONTRACTOR of such termination, and specifying the effective date thereof ("Notice of Termination"). Such termination may be for SAFE's convenience, due to lack of available funding for the Services, or because of CONTRACTOR's failure to perform its duties and obligations under this Contract, including, but not limited to, the failure of CONTRACTOR to timely perform Services pursuant to the Scope of Services described in Section 3, entitled "Terms," as well as Section 7 of the RFP. CONTRACTOR may not terminate this Contract except for cause.

3.15.2 Discontinuance of Services. Upon receipt of the written Notice of Termination, CONTRACTOR shall discontinue all affected Services as directed in the Notice of Termination, and deliver to SAFE all Documents and Data, as defined in this Contract, as may have been prepared or accumulated by CONTRACTOR in performance of the Services, whether completed or in progress.

3.15.3 Effect of Termination For Convenience. If the termination is to be for the convenience of SAFE, SAFE shall compensate CONTRACTOR for Services fully and adequately provided through the effective date of termination as provided in the Notice of Termination. Such payment shall include a pro-rated amount of profit, if applicable, up through such effective date, but no amount shall be paid for anticipated profit on unperformed Services past such effective date. CONTRACTOR shall provide documentation deemed adequate by SAFE's Representative to show the Services actually completed by CONTRACTOR prior to the effective date of termination. This Contract shall terminate on the effective date of the Notice of Termination.

3.15.4 Effect of Termination for Cause. If the termination is for cause, CONTRACTOR shall be compensated for those Services which have been fully and adequately completed and accepted by SAFE as of the effective date of termination as provided in the Notice of Termination. In such case, SAFE may take over the work and prosecute the same to completion by contract or otherwise. Further, CONTRACTOR shall be liable to SAFE for any reasonable additional costs or damages incurred to revise work for which SAFE has compensated CONTRACTOR under this Contract, but which SAFE has determined in its sole discretion needs to be revised, in part or whole. Termination of this Contract for cause may be considered by SAFE in determining whether to enter into future contracts with CONTRACTOR.

3.15.5 Cumulative Remedies. The rights and remedies of the Parties provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

3.15.6 Procurement of Similar Services. In the event this Contract is terminated, in whole or in part, as provided by this Section, SAFE may procure, upon such terms and in such manner as it deems appropriate, services similar to those terminated.

3.15.7 Waivers. CONTRACTOR, in executing this Contract, recognizes that the Services may be terminated, in whole or in part, as provided in this Section. CONTRACTOR shall not be entitled to any damages including, but not limited to, any compensation for costs incurred to procure vehicles, meet the terms for providing the Services, or for any other costs or expenses, and shall be deemed to have waived any and all claims for damages, costs or expenses which may otherwise arise from SAFE's termination of this Contract, for convenience or cause, as provided in this Section.

3.15.8 Authorization to Terminate. The Executive Director of SAFE shall have the full authority and discretion to exercise SAFE's rights under this Section 3.15, entitled "Termination".

3.16 Trend Meetings. CONTRACTOR shall attend, or send a designated management-level representative, to all trend meetings (i.e., required FSP TAC meeting which meets every other month). These trend meetings will encompass focused and informal discussions concerning, but not limited to: scope, Services, schedule, current progress of Services, relevant cost issues, and future objectives. CONTRACTOR shall be responsible for having a representative attend all meetings (i.e., FSP TAC meetings) that has the ability to make management-level decisions on the behalf of the CONTRACTOR. If the CONTRACTOR

cannot have a management-level representative at a meeting, CONTRACTOR shall notify SAFE and CHP prior to the meeting. Management-level attendance at these meetings shall be considered part of the CONTRACTOR's contractual responsibility. Meetings are scheduled, and CONTRACTOR will be notified of such schedule, no later than three (3) working days prior to the meeting.

### 3.17 Fees and Payment.

3.17.1 Amount to be Paid. Subject to the provisions set forth below for Services satisfactorily performed hereunder, SAFE shall pay the CONTRACTOR on a fixed unit rate basis a ceiling price NOT TO EXCEED **THREE MILLION THREE HUNDRED FIFTY-SEVEN THOUSAND THREE HUNDRED THIRTY DOLLARS (\$3,357,330).**

3.17.2 Maximum Payment is the Ceiling Price. SAFE shall not be obligated to pay costs which exceed the ceiling price set forth above, except as provided in Sections 3.15 and 3.17.10. CONTRACTOR agrees to use its best efforts to perform the services and all obligations under this Contract within such ceiling price.

3.17.3 Hourly Rate; Break and Meal Periods. For its performance of the Services, the CONTRACTOR shall be paid for labor expended directly in the performance of the Services at the rates specified below. Payments shall be made monthly in arrears based on Services provided and allowable incurred expenses. The CONTRACTOR shall not be entitled to reimbursements for any expenses unless approved in advance in writing.

#### SCHEDULE OF HOURLY RATES

Classification	Year 1	Year 2	Year 3	Year 4	Year 5
Regular Rate	\$ 103.95 per hour	\$ 103.95 per hour	\$ 109.78 per hour	\$ 109.78 per hour	\$ 113.55 per hour
CFSP/Extra Rate	\$ 114.39 per hour	\$ 114.39 per hour	\$ 120.68 per hour	\$ 120.68 per hour	\$ 124.90 per hour

Hourly rates may be adjusted as set forth in Chapter 9, Violations/Penalties, of the FSP Standard Operating Procedures (SOP).

A) CONTRACTOR is responsible for compliance with all California labor laws related to break periods and meal periods including, but not limited to, compliance with Labor Code section 512. CONTRACTOR shall be solely responsible for any additional pay to which its drivers may be entitled for CONTRACTOR's failure to comply with the California labor law requirements.

B) During shifts that require drivers to be provided a 30-minute meal period break pursuant to Labor Code section 512, CONTRACTOR shall either make arrangements for another certified driver to provide Services during those breaks or not be compensated for each 30-minute meal period break during which Services are not provided. In no case shall CONTRACTOR be entitled to bill RCTC for time during which a driver is taking a meal period break.

3.17.4 Payment Coverage. The compensation herein above specified will cover and include all applicable labor surcharges such as taxes, insurance and fringe benefits, as well as indirect costs, overhead, general and administrative expense, and profit.

3.17.5 Cost Principles.

A) CONTRACTOR agrees to comply with 2 CFR, Part 225, Cost Principles for State and Local Government, and 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

B) CONTRACTOR agrees that 1) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual cost items, and 2) CONTRACTOR shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

C) Any costs for which CONTRACTOR has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 225, 48 CFR, Chapter 1, Part 31 or 2 CFR, Part 200, are subject to repayment by CONTRACTOR to SAFE. Should CONTRACTOR fail to reimburse moneys due SAFE within 30 days of demand, or within such other period as may be agreed in writing between the Parties hereto, SAFE is authorized to intercept and withhold future payments due CONTRACTOR from SAFE or any third-party source, including, but not limited to, the State Treasurer, the State Controller, and the California Transportation Commission.

3.17.6 Fines. Fines for starting late; leaving early; taking more breaks than authorized; or being ordered out of service by a CHP, SAFE Representative or Caltrans supervisor for Contract infractions shall be deducted from the CONTRACTOR's monthly invoice at five (5) times the hourly rate, plus the loss of revenue for the down time. Fines may be further described in the attached Exhibit "A" or Exhibit "B".

3.17.7 Accounting System. CONTRACTOR and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate expenditures by line item for the Services. The accounting system of CONTRACTOR and its subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

3.17.8 Invoices. Invoices for CONTRACTOR's Services shall be submitted monthly on forms approved by SAFE. Invoices will be routinely verified by CHP. To ensure prompt payment, most billing disputes may be resolved within ten (10) working days of written notice of dispute. However, at SAFE's discretion, reconciliation of disputed fines that sum to less than 2% of the months' Invoice may be corrected on the next month's Invoice to ensure prompt payment of the major portion of the invoice. Each Invoice shall include a cover sheet bearing a certification as to the accuracy of the statement signed by the CONTRACTOR's

authorized officer. Invoices shall be mailed to SAFE's Contract Administrator at the following address:

Riverside County Service Authority for Freeway Emergencies  
FSP Program  
P.O. Box 12008  
Riverside, CA  
92502-2208  
Attn: Brian Cunanan

3.17.8.1 Monthly Progress Reports. As part of its Invoice, CONTRACTOR shall submit a Monthly Progress Report, in a form determined by SAFE, which will cover the Invoice period and include spreadsheets showing hours expended for each day of the month per vehicle per beat, and the total for the term of the Contract to date. Submission of such Monthly Progress Report by CONTRACTOR shall be a condition precedent to receipt of payment from SAFE for each monthly Invoice submitted.

3.17.8.2 Payment Schedule. Invoice periods shall be based upon a calendar month, beginning with the first day of the month. SAFE shall reimburse CONTRACTOR for Services adequately provided under this Contract within thirty (30) days of receiving the current period invoice with no errors. If the Invoice is completed incorrectly by the CONTRACTOR it will delay payment. If SAFE fails to pay any amount owed to CONTRACTOR under this Contract within thirty (30) days after receipt of the invoice, CONTRACTOR may give SAFE a notice of failure to pay which shall set forth the invoice(s) and amount(s) which CONTRACTOR believes are thirty (30) days overdue. SAFE shall pay any undisputed invoice(s) and amount(s) within thirty (30) days of receipt of a notice of failure to pay.

3.17.9 Right to Audit. For the purpose of determining compliance with this Contract and other matters connected with the performance of CONTRACTOR's contracts with third parties, CONTRACTOR and its subcontractors shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times for three years from the date of final payment of Funds to CONTRACTOR. SAFE, the State of California acting through the Department of Transportation or its duly authorized representative, the California State Auditor, or the United States Department of Transportation shall each have access to any books, records, and documents that are pertinent for audits, examinations, excerpts, and transactions, and CONTRACTOR shall furnish copies thereof if requested.

3.17.10 Taxes. CONTRACTOR shall pay any sales, use, or other taxes, if any, attributable to the provision of the Services.

3.17.11 Travel and Subsistence. Payments to CONTRACTOR for travel and subsistence expenses claimed for reimbursement or applied as local match credit shall not exceed rates authorized to be paid exempt non-represented State employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced are in excess



of those authorized DPA rates, then CONTRACTOR is responsible for the cost difference and any overpayments shall be reimbursed to SAFE on demand.

3.17.12 Employment Adverse to the SAFE. CONTRACTOR shall notify SAFE, and shall obtain SAFE's written consent, prior to accepting work to assist with or participate in a third-party lawsuit or other legal or administrative proceeding against SAFE during the term of this Contract.

3.17.13 Extra Work. At any time during the term of this Contract, SAFE may request CONTRACTOR to perform Extra Work. "Extra Work" shall mean any work which is determined by SAFE to be necessary for proper completion of the Services, but which the Parties did not reasonably anticipate would be necessary at the time of the execution of this Contract and was not included in the Scope of Services. Extra Work, if any, shall be reimbursed at the same hourly rate as identified in Section 3.17.3. CONTRACTOR shall not perform, nor be compensated for Extra Work without obtaining authorization in the form of a written Extra Work Order issued by SAFE's Representative. For instance, Construction FSP services as it relates to construction activity can be considered Extra Work. In the event an Extra Work Order is not issued and signed by SAFE's Representative, CONTRACTOR shall not provide such Extra Work. However, no compensation or reimbursement for Extra Work shall be paid if it is not authorized by SAFE and if the cumulative total of such Extra Work under the Contract exceeds \$25,000. All Extra Work in a cumulative total in excess of \$25,000 must be approved in advance by amendment to this Contract.

3.17.13.1 Extra Work Cancellation Policy. If a tow operator is scheduled for Extra Work and they are notified of a cancellation with **LESS than a 24 hour notice** – then the tow operator will be reimbursed for **three (3) hours** of the agreed upon contract hourly rate. *Note: The minimum of the three (3) hours should cover eight hours of the drivers' hourly wage.* Starting with "Less than a 24 hour cancellation notice" up to the time the tow operator is on the assigned Extra Work Beat, the "three contract hour cancellation rate" remains the same. Once the tow operator is on the Extra Work Beat, the cancellation policy changes.

If a tow operator begins the Extra Work (the truck is on the Beat) and is then notified that Extra Work has been cancelled, the FSP operator will be paid for the entire shift period **up to a maximum of eight (8) hours**. A shift period for this policy is defined as: the time period of the actual Extra Work shift assigned or for a maximum of eight (8) contract hours, whichever is less.

The supervising FSP CHP Officer for the Extra Work shift will make the final determination as to whether or not the tow operator will continue to work the Extra Work shift. Regardless, the tow operator will be reimbursed for the original shift period or a maximum of eight (8) hours, whichever is less.

3.17.14 Most Favored Customer. CONTRACTOR agrees that, throughout the term of this Contract, it shall not enter into any FSP services agreement with any government agency with whom it has either existing contractual relationship or has no contractual relationship that predates this Contract, pursuant to which CONTRACTOR agrees to charge FSP services fees less than those as indicated in this Contract for substantially the

same level of FSP services contemplated by this Contract. Should SAFE establish that such lower fees have been agreed to by CONTRACTOR with another government agency, CONTRACTOR agrees to renegotiate the fees or to refund SAFE an amount equal to the difference between the fees indicated in this Contract and the fees charged to other government agency customer.

### **3.18 Delay in Performance.**

3.18.1 Excusable Delays. Neither Party shall be considered in default in the performance of its obligations to the extent that the performance of any such obligation is prevented or delayed by an Excusable Delay. Should CONTRACTOR be delayed or prevented from the timely performance of any act or Services required by the terms of the Contract by an Excusable Delay, Contractor's schedule for completion of tasks affected by such delay may be extended as set forth in Section 3.18.2. But in every case, CONTRACTOR's failure to perform must be reasonably beyond the control, and without the fault or negligence of the CONTRACTOR. Excusable Delays are acts of God or of the public enemy, acts or omissions of SAFE or other governmental agencies in either their sovereign or contractual capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather.

3.18.2 Written Notice. If CONTRACTOR believes it is entitled to an extension of time due to conditions set forth in subsection 3.18.1, CONTRACTOR shall provide written notice to the SAFE within seven (7) working days from the time CONTRACTOR knows, or reasonably should have known, that performance of the Services will be delayed due to such conditions. Failure of CONTRACTOR to provide such timely notice shall constitute a waiver by CONTRACTOR of any right to an excusable delay in time of performance.

3.18.3 Mutual Contract. Performance of any Services under this Contract may be delayed upon mutual agreement of the Parties. Upon such agreement, CONTRACTOR's Schedule of Services (as defined in their Proposal) shall be extended as necessary by SAFE. CONTRACTOR shall take all reasonable steps to minimize delay in completion, and additional costs, resulting from any such extension.

### **3.19 Status of CONTRACTOR/Subcontractors.**

3.19.1 Independent Contractor. The Services shall be performed by CONTRACTOR or under its supervision. CONTRACTOR will determine the means, methods and details of performing the Services subject to the requirements of this Contract. SAFE retains CONTRACTOR on an independent contractor basis and not as an employee, agent or representative of the SAFE. CONTRACTOR retains the right to perform similar or different services for others during the term of this Contract. Any additional personnel performing the Services under this Contract on behalf of CONTRACTOR shall at all times be under CONTRACTOR's exclusive direction and control. CONTRACTOR shall pay all wages, salaries and other amounts due such personnel in connection with their performance of Services and

as required by law. CONTRACTOR shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, disability insurance, and workers' compensation insurance.

3.19.2 Assignment or Transfer. CONTRACTOR shall not assign, hypothecate, or transfer, either directly or by operation of law, this Contract or any interest herein, without the prior written consent of SAFE. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. Notwithstanding the foregoing, SAFE may transfer or assign any and all of its rights and obligations under this Contract, including, without limitation the rights to terminate this Contract, as assigned, pursuant to Section 3.15 hereof.

3.19.3 Subcontracting. CONTRACTOR shall not subcontract any portion of the work or Services required by this Contract, except as expressly stated herein, including the Scope of Services, without prior written approval of the SAFE. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Contract. SAFE shall have no liability to any subconsultant(s) for payment for services under this Contract or other work performed for CONTRACTOR, and any subcontract entered into by CONTRACTOR pursuant to the conduct of services under this Contract shall duly note that the responsibility for payment for the technical services or any other work performed shall be the sole responsibility of CONTRACTOR.

3.20 CONTRACTOR will maintain an inventory of all non-expendable equipment, defined as having a useful life of at least two years and an acquisition cost of \$500 or more, paid for with funds provided pursuant to this Contract.

3.21 Ownership of Materials and Confidentiality.

3.21.1 Documents & Data; Licensing of Intellectual Property. All plans, specifications, studies, drawings, estimates, materials, data, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings, spreadsheets, or data magnetically or otherwise recorded on computer diskettes, prepared by or on behalf of CONTRACTOR under this Contract ("Documents and Data"), shall be made available to SAFE at all times during this Contract and shall become the property of SAFE upon the completion of the term of this Contract, except that CONTRACTOR shall have the right to retain copies of all such Documents and Data for its records. Should CONTRACTOR, either during or following termination of this Contract, desire to use any Documents and Data, it shall first obtain the written approval of SAFE. This Contract creates a no-cost, nonexclusive, and perpetual license for SAFE to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in the Documents and Data which are prepared or caused to be prepared by CONTRACTOR under this Contract ("Intellectual Property"). CONTRACTOR shall require all subcontractors to agree in writing that SAFE is granted a no-cost, nonexclusive, and perpetual license for any Intellectual Property the subcontractor prepares under this Contract. CONTRACTOR

represents and warrants that CONTRACTOR has the legal right to license any and all Intellectual Property prepared or caused to be prepared by CONTRACTOR under this Contract. SAFE shall not be limited in any way in its use of the Intellectual Property at any time, provided that any such use not within the purposes intended by this Contract shall be at SAFE's sole risk.

**3.21.2 Confidentiality.** All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to CONTRACTOR in connection with the performance of this Contract shall be held confidential by CONTRACTOR to the extent permitted by law, including, without limitation, the California Public Records Act, Government Code section 6250 et seq. Such materials shall not, without the prior written consent of SAFE, be used by CONTRACTOR for any purposes other than the performance of the Services as provided herein. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services, except as provided herein. Nothing furnished to CONTRACTOR which is otherwise known to CONTRACTOR or is generally known, or becomes known, to the related industry shall be deemed confidential. CONTRACTOR shall not use SAFE's name or insignia, photographs, or any publicity pertaining to the Services in any magazine, trade paper, newspaper, television or radio production, or other similar medium without the prior written consent of SAFE.

**3.22 Indemnification.** CONTRACTOR shall indemnify and hold SAFE, COMMISSION, CHP, Caltrans and their directors, officials, officers, agents, contractors, consultants, employees, and volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of, or incident to, any acts, omissions, or willful misconduct of the CONTRACTOR, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Services or this Contract, including without limitation, the payment of all consequential damages and other related costs and expenses. CONTRACTOR shall defend, at CONTRACTOR's own cost, expense and risk, any and all such aforesaid suits, actions, or other legal proceedings of every kind that may be brought or instituted against SAFE, COMMISSION, CHP, Caltrans or their directors, officials, officers, agents, contractors, consultants, employees, and volunteers. CONTRACTOR shall pay and satisfy any judgment, award, or decree that may be rendered against SAFE, COMMISSION, CHP, Caltrans or their directors, officials, officers, agents, consultants, employees, and volunteers, in any such suit, action, or other legal proceeding. CONTRACTOR shall reimburse SAFE, COMMISSION, CHP, Caltrans and their directors, officials, officers, agents, consultants, employees, and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. CONTRACTOR's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the CONTRACTOR, SAFE, COMMISSION, CHP, Caltrans or their directors, officials, officers, agents, consultants, employees, and volunteers.

**3.23 Insurance.**

3.23.1 Time for Compliance. CONTRACTOR shall not commence work under this Agreement until it has provided evidence satisfactory to SAFE that it has secured all insurance required under this section, in a form and with insurance companies acceptable to SAFE. In addition, CONTRACTOR shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

3.23.2 Minimum Requirements. CONTRACTOR shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the CONTRACTOR, its agents, representatives, employees or subcontractors. CONTRACTOR shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or exact equivalent); (2) Automobile Liability: Insurance Services Office Business Auto Coverage (form CA 0001, code 1 (any auto) or exact equivalent); and (3) Workers' Compensation and Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. CONTRACTOR shall maintain limits no less than:

(i) General Liability:

Per occurrence:	\$2,000,000
Project Specific Aggregate:	\$4,000,000
Products/Completed Operations:	\$1,000,000
Personal Injury Limit:	\$1,000,000

(ii) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage; and

(iii) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Practices Liability limits of \$1,000,000 per accident.

3.23.3 On-Hook Insurance & Garage Keepers Liability Coverage.

(A) CONTRACTOR shall maintain a policy of On-Hook Towing Insurance to include the care, custody or control exposure present while vehicles are being serviced roadside, on-hook, or in a storage yard for not less than one hundred thousand dollars (\$100,000).

(B) CONTRACTOR shall maintain a policy of Garage Keepers Liability

Insurance which shall include coverage for vehicles in the care, custody and control of the CONTRACTOR with limits of liability not less than \$500,000 per occurrence for property damage.

3.23.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or CONTRACTOR shall provide endorsements on forms approved by SAFE to add the following provisions to the insurance policies:

(A) General Liability.

(i) Commercial General Liability Insurance must include coverage for (1) bodily Injury and property damage; (2) personal Injury/advertising Injury; (3) premises/operations liability; (4) products/completed operations liability; (5) aggregate limits that apply per Project; (6) explosion, collapse and underground (UCX) exclusion deleted; (7) contractual liability with respect to this Agreement; (8) broad form property damage; and (9) independent consultants coverage.

(ii) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to this Agreement.

(iii) The policy shall give SAFE, COMMISSION, CHP, Caltrans and their directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(iv) The additional insured coverage under the policy shall be "primary and non-contributory" and will not seek contribution from SAFE, COMMISSION, CHP, or Caltrans insurance or self-insurance and shall be at least as broad as CG 20 01 04 13, or endorsements providing the exact same coverage.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) SAFE, COMMISSION, CHP, Caltrans and their directors, officials, officers, employees and agents shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the CONTRACTOR or for which the CONTRACTOR is responsible; and (2) the insurance coverage shall be primary insurance as respects SAFE, COMMISSION, CHP, Caltrans and their directors, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the CONTRACTOR's scheduled underlying coverage. Any insurance or self-insurance maintained by SAFE, COMMISSION, CHP, Caltrans or their directors, officials, officers, employees and agents shall be excess of the CONTRACTOR's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage.

(i) CONTRACTOR certifies that he/she is aware of the provisions of Section 3700 of the California 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 he/she will comply with such provisions before commencing work under this Agreement.

(ii) The insurer shall agree to waive all rights of subrogation against SAFE, its directors, officials, officers, employees and agents for losses paid under the terms of the insurance policy which arise from work performed by the CONTRACTOR.

(D) All Coverages.

(i) Defense costs shall be payable in addition to the limits set forth hereunder.

(ii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to SAFE, its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

(iii) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of SAFE, COMMISSION, CHP, and Caltrans (if agreed to in a written contract or agreement) before SAFE, COMMISSION, CHP or Caltrans own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella/excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

(iv) CONTRACTOR shall provide SAFE at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the CONTRACTOR shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the CONTRACTOR shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to SAFE at least ten (10) days prior to the effective date of cancellation or expiration.

(v) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. CONTRACTOR shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. CONTRACTOR shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not

renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(vi) The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONTRACTOR, and any approval of said insurance by SAFE, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the CONTRACTOR pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(vii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, SAFE has the right but not the duty to obtain the insurance it deems necessary and any premium paid by SAFE will be promptly reimbursed by CONTRACTOR or SAFE will withhold amounts sufficient to pay premium from CONTRACTOR payments. In the alternative, SAFE may cancel this Agreement. SAFE may require the CONTRACTOR to provide complete copies of all insurance policies in effect for the duration of the Project.

(viii) Neither SAFE, COMMISSION, CHP, Caltrans nor any of their directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

Each insurance policy required by this Agreement shall be endorsed to state that:

**3.23.5 Deductibles and Self-Insurance Retentions.** Any deductibles or self-insured retentions must be declared to and approved by SAFE. If SAFE does not approve the deductibles or self-insured retentions as presented, CONTRACTOR shall guarantee that, at the option of SAFE, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SAFE, its directors, officials, officers, employees and agents; or, (2) the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

**3.23.6 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating no less than A: VIII, licensed to do business in California, and satisfactory to SAFE.

**3.23.7 Verification of Coverage.** CONTRACTOR shall furnish SAFE with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to SAFE. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by SAFE before work commences. SAFE reserves the right to require complete, certified copies of all required insurance policies, at any time.

**3.23.8 Subcontractor Insurance Requirements.** CONTRACTOR shall not allow any subcontractors to commence work on any subcontract until they have provided



evidence satisfactory to SAFE that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subcontractors shall be endorsed to name SAFE, COMMISSION, CHP and Caltrans as additional insureds using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by CONTRACTOR, SAFE may approve different scopes or minimum limits of insurance for particular subcontractors or subcontractors.

3.23.9 Review of Coverage. SAFE retains the right at any time to review the coverage, form and amount of insurance required herein and may require CONTRACTOR to obtain additional insurance reasonably sufficient in coverage, form, amount to provide adequate protection against the kind and extent of risk which exists at the time of change in insurance required.

3.23.10 Safety. CONTRACTOR shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the CONTRACTOR shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment, and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### 3.24 Prohibited Interests.

3.24.1 Solicitation. CONTRACTOR warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Contract. Further, CONTRACTOR warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for CONTRACTOR, any fee, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, SAFE shall have the right to rescind this Contract without liability.

3.24.2 Conflict of Interest. For the term of this Contract, no member, officer or employee of SAFE, during the term of his or her service with SAFE, shall have any direct interest in this Contract, or obtain any present or anticipated material benefit arising therefrom.

3.24.3 Conflict of Employment. Employment by the CONTRACTOR of personnel currently on the payroll of SAFE shall not be permitted in the performance of this Contract, even though such employment may occur outside of the employee's regular working hours or on weekends, holidays, or vacation time. Further, the employment by the CONTRACTOR of personnel who have been on SAFE payroll within one year prior to the date

of execution of this Contract, where this employment is caused by, and or dependent upon, the CONTRACTOR securing this or related Contracts with SAFE, is prohibited.

3.25 Nondiscrimination; Equal Opportunity Employment. CONTRACTOR shall not deny any benefits of this Contract 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 CONTRACTOR unlawfully discriminate, harass, or allow harassment against any subcontractor, 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.

Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination. Employment and Housing Act (Gov. Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Admin. Code, Tit. 2, Section 7285.0 et seq.): The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Sec 12900, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code, Sec 12900, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this Contract by reference and made a part hereof as if set forth in full. CONTRACTOR shall include the provisions of this Section in all of CONTRACTOR's subcontracts with respect to work under this Agreement, unless exempted by the Regulations. CONTRACTOR shall also comply with all relevant provisions of SAFE's Minority Business Enterprise program, Affirmative Action Plan, or other related SAFE programs or guidelines currently in effect or hereinafter enacted.

3.26 Right to Employ Other CONTRACTORS. SAFE reserves the right to employ other CONTRACTORS in connection with the Services.

3.27 Governing Law. The validity of this Contract and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by and construed with the laws of the State of California.

3.28 Venue. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in Riverside County, California. The Parties agree that the venue for any action or claim brought by any Party will be the Central District of Riverside County. Each Party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties agree to use their best efforts to obtain a change of venue to the Central District of Riverside County.

3.29 Time of Essence. Time is of the essence for each and every provision of this Contract.

3.30 Headings. Article and section headings, paragraph captions, or marginal headings contained in this Contract are for convenience only and shall have no effect in the construction or interpretation of any provision herein.

3.31 Notices. All notices hereunder and communications regarding interpretation of the terms of this Contract or changes thereto shall be given to the respective Parties at the following addresses, or at such other addresses as the respective Parties may provide in writing for this purpose:

**CONTRACTOR:**  
**Royal Coaches Auto**  
**Body and Towing**  
**14827 Ramona Blvd**  
**Baldwin Park, CA 91706**  
**Attn: William Salazar**

**SAFE:**  
**Riverside County Service Authority**  
**for Freeway Emergencies**  
**FSP Program**  
**P.O. Box 12008**  
**Riverside, CA**  
**92502-2208**  
**Attn: Brian Cunanan**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. mail, first class postage prepaid, and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.32 Electronic Delivery of Agreement. A manually signed copy of this Agreement which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of the Agreement for all purposes.

3.33 Amendment or Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.34 Entire Contract. This Agreement contains the entire Agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, contracts or understandings.

3.35 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.36 No Waiver. Failure of CONTRACTOR to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

3.37 Eight-Hour Law. Pursuant to the provisions of the California Labor Code, eight hours of labor shall constitute a legal day's work, and the time of service of any worker employed on the work shall be limited and restricted to eight hours during any one calendar day, and forty hours in any one calendar week, except when payment for overtime is made at not less than one and one-half the basic rate for all hours worked in excess of eight hours per day ("Eight-Hour Law"), unless CONTRACTOR or the Services are not subject to the Eight-Hour Law. CONTRACTOR shall forfeit to SAFE as a penalty, \$50.00 for each worker employed in the execution of this Agreement by him, or by any sub-consultant under him, for each calendar day during which such workman is required or permitted to work more than eight hours in any calendar day and forty hours in any one calendar week without such compensation for overtime violation of the provisions of the California Labor Code, unless CONTRACTOR or the Services are not subject to the Eight-Hour Law.

3.38 Subpoenas or Court Orders. Should CONTRACTOR receive a subpoena or court order related to this Agreement, the Services or the Project, CONTRACTOR shall immediately provide written notice of the subpoena or court order to the SAFE. CONTRACTOR shall not respond to any such subpoena or court order until notice to the SAFE is provided as required herein and shall cooperate with the SAFE in responding to the subpoena or court order.

3.39 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, and the obligations related to receipt of subpoenas or court orders, shall survive any such expiration or termination.

3.40 Counterparts. This Agreement may be signed in one or more counterparts, any one of which shall be effective as an original document.

3.41 Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this Agreement as though fully set forth herein.

3.42 Conflicting Provisions. In the event that provisions of any attached exhibits conflict in any way with the provisions set forth in this Agreement, the language, terms and conditions contained in this Agreement shall control the actions and obligations of the Parties and the interpretation of the Parties' understanding concerning the performance of the Services. In the event the standards set forth in this Agreement conflict with the standards set forth in any exhibit hereto, the higher standard shall govern.

3.43 Attorneys' Fees and Costs. If any legal action is instituted to enforce or declare any Party's rights hereunder, each Party, including the prevailing Party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a Party hereto and payable under Section 3.21, Indemnification.

3.44 Consent. Whenever consent or approval of any Party is required under this Contract, that Party shall not unreasonably withhold nor delay such consent or approval.

3.45 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

**[Signatures on following page]**

DRAFT

**SIGNATURE PAGE  
TO AGREEMENT 22-45-085-00**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first herein written above.

RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION  
ACTING AS THE  
RIVERSIDE COUNTY SERVICE  
AUTHORITY FOR FREEWAY  
EMERGENCIES

ROYAL COACHES AUTO BODY AND  
AND TOWING

By: \_\_\_\_\_  
RCTC Chair

By: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

APPROVED AS TO FORM:

Attest:

By: \_\_\_\_\_  
Best Best & Krieger LLP,  
Counsel to the Riverside County  
Service Authority for  
Freeway Emergencies

By: \_\_\_\_\_  
Its: Secretary

**EXHIBIT “A”**

**Scope of Services  
Beat 19 & 19**

**1.0 GENERAL INFORMATION**

**1.1 Background & Introduction**

In 1986, the Commission established itself as the Riverside County Service Authority for Freeway Emergencies (RC SAFE) after the enactment of SB 1199 in 1985. The purpose of the formation of SAFEs in California was to provide call box services and, with excess funds, provide additional motorist aid services. Funding for RC SAFE is derived from a one dollar per vehicle registration fee on vehicles registered in Riverside County. Initially, these funds were used only for the call box program. As additional motorist aid services were developed, SAFE funds were also used to provide Freeway Service Patrol (FSP) and the Inland Empire 511 traveler information services as part of a comprehensive motorist aid system in Riverside County.

In 1990, Proposition C was passed to fund transportation improvements and to help reduce traffic congestion in California. From this, the FSP program was created by Caltrans, which developed the corresponding Local Funding Allocation Plan to distribute funds to participating jurisdictions. In addition to funding received from Caltrans, agencies are required to contribute a 25 percent local match. For the Commission, SAFE revenues are used to meet this match requirement.

The Commission, acting in its capacity as the SAFE, is the principal agency in Riverside County, in partnership with Caltrans and the California Highway Patrol (CHP), managing the FSP program. The purpose of the FSP program is to provide a continuously roving tow services patrol along designated freeway segments (referred to as beats) to relieve freeway congestion and facilitate the rapid removal of disabled vehicles and those involved in minor accidents on local freeways. Contracts to provide FSP tow service are competitively bid as needed for each beat.

**1.2 Project Description**

The purpose of the FSP program is to provide a continuous roving patrol for the rapid removal of disabled vehicles and those involved in minor accidents from the freeway. Where traffic conditions permit, safe removal of small debris will be required. Vehicle operators shall be responsible for clearing the freeway of automobiles, small trucks, and small debris. When and where conditions warrant, service may be executed on the freeway shoulders. Where conditions do not warrant, vehicle operators will remove the vehicles from the freeway to provide service. FSP vehicles shall continuously patrol their assigned beat, respond to CHP calls for Services, use the designated turnaround locations, and use the CHP identified designated drop locations.

FSP vehicle operators may be required to perform minor services such as change flat tires, provide "jump" starts, provide one gallon of gasoline or diesel fuel, temporarily tape cooling system hoses, and refill radiators in a safe and efficient manner. Vehicle operators may spend a maximum of ten (10) minutes per disablement in attempting to mobilize a vehicle. If a disabled vehicle cannot be mobilized within the ten-minute (10) time limit, it shall be towed to a designated drop location identified by the CHP. The motorist can request the FSP vehicle operator to call the CHP Communications Center to request a CHP rotational tow or other services. FSP vehicle operators shall not be allowed to tow as an independent contractor from an incident that occurred during the FSP shift unless called as a rotation tow by CHP after the FSP shift has ended. If called as a rotation tow after a FSP shift, the vehicle operator must remove all FSP markings such as vests, uniforms, and magnetic vehicle signage.

There may be some instances where FSP operators may be requested to provide assistance to CHP officers. FSP operators shall follow the instructions of the CHP officer at the scene of any incident within the scope of the FSP program.

All FSP services shall be provided at no cost to the motorist. FSP vehicle operators shall not accept gratuities, perform secondary towing services, recommend secondary tows, or recommend repair/body shop businesses.

Freeway Service Patrol hours of operation are 5:30 a.m. to 8:30 a.m. and 2:30 p.m. to 6:30 p.m., Monday through Thursday; and 5:30 a.m. to 8:30 a.m. and 12:30 p.m. to 6:30 p.m. on Friday. Select beat(s) may also have weekend (10:00 a.m. to 6:00 p.m.) and/or weekday mid-day service (time between AM/PM shifts) schedules. Contractor vehicles shall be exclusively dedicated to the service during FSP service hours. All vehicle maintenance activities shall be conducted during non-service hours.

The FSP operates on selected freeway segments referred to as "Beats". Each Beat has specific turnaround locations and designated drop locations identified by the California Highway Patrol (CHP). The Scope of Services (Section 2.0) hereunder identifies the specific limits, number of tow trucks, number of back-up trucks, hours of operation, and tentative holidays on which the cost of each beat shall be based. RCTC reserves the right to add or delete holidays to the work schedule. Travel time to and from the Beat will be at the expense of the Contractor.

**To be awarded a contract, a Contractor must have a tow facility within close proximity to the service area, have been in business as a tow service operator for a minimum of five (5) years, and have a minimum of one (1) full year experience working under contract/agreement and in good standing within the last three (3) years with any type of law enforcement agency.**

A Contractor with no prior FSP experience shall be considered NEW and may only be awarded one FSP beat. A Contractor that has been terminated for cause from any FSP contract within the state shall not be eligible to participate in the Riverside County FSP program. A NEW Contractor, who remains in good standing, as determined by FSP



management, may be considered for additional beat awards in future procurements. An existing Contractor that is not in good standing as determined by information received by the FSP management staff at the time of their proposal may, at the discretion of FSP management, be limited to the number of beats the Contractor is awarded, including not being awarded any beats.

**FSP Management Staff reserves the right to limit the number of beats awarded to one Contractor.**

At any time during the contract's term, RCTC reserves the right to adjust Beat specifications and Beat hours to better accommodate demand for the service, or the availability of funding. These changes can occur during the course of the contract through written change orders. If warranted during the service hours of operation, the Contractor may be requested to temporarily reassign his/her FSP operators/trucks to locations outside its assigned Beat. Tow Operators may be permitted to do this only upon CHP and/or RCTC approval. FSP vehicle operators shall follow the instructions of the CHP officer at the scene of any incident within the scope of the FSP program.

**The contract start date for Beats 18 & 19 is September 14, 2022. The first day of FSP service is Monday, April 3, 2023. This is a 5-year contract that expires on March 31, 2028.**

If awarded a contract, the Contractor shall have one hundred ninety-four (194) calendar days for Beats 18 & 19, after the notice of award (notice of award tentatively expected on or around September 14, 2022), in which to acquire the required equipment and hire and train vehicle operators. The Contractor shall have the appropriate number of primary and back-up trucks ready for equipment installation and CHP inspection no later than March 20, 2023. Any company that cannot meet the above-mentioned requirements shall not be awarded the contract(s).

## **2.0 Beat Description/Summary**

FSP operates on selected freeway segments referred to as "beats". Each beat has specific turnaround locations and designated drop locations identified by the CHP. The specific limits, number of tow trucks, number of back-up trucks and hours of operation, including the holiday schedule, are detailed below. SAFE reserves the right to add or delete holidays to the work schedule, provided that SAFE provides CONTRACTOR seven (7) days advanced notice of such addition or deletion. Travel time to and from the beat will be at the expense of the CONTRACTOR.

At any time, SAFE reserves the right to adjust beat specifications to better accommodate demand for the Services, or availability of funding. These changes can occur during the course of this Contract through written change orders. If warranted and during the hours of operation of the Services, the CONTRACTOR may be requested to temporarily reassign his/her FSP operators/trucks to locations outside the assigned beat.

FSP Contract Beat #	Beat Description	One-Way Length in Miles	# Primary FSP Trucks in both AM and PM	# Backup FSP Trucks
18 & 19	Beat 18: I-215 from Riverside County line to Central Ave.	5.8	3	1
	Beat 19: I-215 from Alessandro to SR-74/W 4th St.	10.2		

## 2.1 Hours of Operation:

Monday through Thursday: 5:30 a.m. to 8:30 a.m., and from 2:30 p.m. to 6:30 p.m.  
Friday: 5:30 a.m. to 8:30 a.m., and from 12:30 p.m. to 6:30 p.m.

Service Area Beat 18 & 19 requires at least one backup truck available at all times.  
**RCTC reserves the right to change Beat hours and operational requirements during the course of the contract.**

- a. Total estimated service hours per vehicle/per year: 1,950
  - b. In addition to the above service hours, at the discretion of RCTC and CHP, additional service may be requested on certain "high traffic days" on/or following certain holidays (e.g. July 4th, Labor Day, and Memorial Day). Contractor will be notified at least one week prior to when this service is to be provided.

During FSP shifts that require a 30-minute meal period break to be provided pursuant to Labor Code section 512, the Contractor shall either make arrangements for another certified FSP driver to provide the contracted FSP coverage during those breaks or not be compensated for each 30-minute meal period break during which FSP service is not provided. In no case shall the Contractor be entitled to compensation from RCTC for time during which its FSP driver is taking a 30-minute meal period break, unless the Contractor has provided another driver to cover this 30-minute meal period break.

## 2.2 Holiday Schedule

Proposer shall submit its cost proposal for provision of the required FSP tow services five days each week, Monday through Friday, of each year during the contract term, except for the following ten (10) holidays:

1. Martin Luther King, Jr. Day (Monday)

2. Presidents' Day (Monday)
3. Memorial Day (Monday)
4. Independence Day (July 4 - varies)
5. Labor Day (Monday)
6. Veterans Day (varies)
7. Thanksgiving Day (Thursday)
8. Day after Thanksgiving (Friday)
9. Christmas Day (December 25 - varies)
10. New Year's Day (January 1 - varies)

### **3.0 FSP Management and Representatives**

RCTC has entered into a Memorandum of Understanding with the California Department of Transportation (Caltrans) and CHP, in order to provide peak hour freeway service patrols on selected freeway segments for traffic mitigation, as well as air quality improvement within Riverside County. RCTC, Caltrans, and CHP will jointly oversee the service. RCTC serves as the contract administrator and funding partner; Caltrans provides oversight; and CHP is responsible for the daily operations and field supervision of the program.

Authority for FSP derives from (a) Section 21718 (A) of the California Vehicle Code, which allows FSP trucks supervised by the CHP to stop on freeways for the purpose of rapid removal of impediments to traffic, and (b) Article 3, Section 91, of the Streets and Highways Code, which states that Caltrans is responsible for traffic management and removing impediments from the highways, as well as improving and maintaining the state highways.

#### **3.1 Standard Operating Procedures**

The guidelines and policies of the FSP program, which promote a safe work environment and maintain a level of professionalism, are contained in the Standard Operating Procedures (SOP) manual developed by the CHP. The SOP and any updates to it are incorporated into the contract with RCTC, therefore, the Contractor and their vehicle operators are responsible to operate and adhere to the most recent version of the SOP at all times.

Contractor shall be held responsible for maintaining an updated SOP (latest version issued with the RFP), which is incorporated herein by reference. SOP revisions and updates shall be unilaterally issued by RCTC or CHP, as deemed necessary by CHP or the FSP Technical Advisory Committee, and all changes, revisions and updates to the SOP, if any, shall supersede all previous or existing SOPs. A copy of the SOP is included as part of the original RFP package and additional hard or soft copies can be provided to all interested parties upon request.

**Vehicle operators or trucks found not to be in compliance with FSP procedures defined in the SOP may be penalized, suspended, and/or terminated from the FSP program and the company may also be assessed liquidated damages amounts for said**

**violations as described herein. Liquidated damages are inclusive of other remedies at law and/or those described under the terms of the contract.**

Refer to Proposal Pricing Form for further details on violations and penalties.

#### **4.0 Vehicles**

##### **4.1 Tow Truck Requirements**

Primary and back-up FSP tow trucks shall be exclusively dedicated to the FSP program during FSP service hours of operation. They are not required to be exclusive during non-FSP hours. All vehicle maintenance activities shall be conducted during non-Service hours. When conducting the Services on a FSP shift, the CONTRACTOR's vehicle shall display all FSP markings and the vehicle operator shall wear a FSP uniform.

The FSP will utilize, at a minimum, Class A tow trucks with a minimum gross vehicle weight rating of 14,000 pounds, dual wheel chassis, and a four (4) ton recovery equipment rating. All trucks proposed for use in the FSP Program must be less than one (1) year old with a maximum of 50,000 miles on the chassis and working parts of the truck at the onset of the contract, free of any mechanical defects or physical damage and have a clear (non-salvage) title. Extenuating circumstances dictating departure from this specification should be at the consensus of the local FSP partners. The CHP, in conjunction with Caltrans or the regional transportation agency, should verify the original purchase dates to ensure compliance. Lastly the truck shall have seating capabilities for five (5) adults.

All FSP tow trucks must be Department of Transportation (DOT) compliant, as well as California Air Resources Board (CARB) compliant. This includes an engine that has been certified by CARB, as required by law in the State of California. Any tow truck that is utilized for the FSP Program must comply with emission standards set forth by DOT and CARB, as well as all local, state, and federal laws associated with that truck and as outlined in the RFP.

Each tow truck shall be equipped in accordance with the CHP's Freeway Service Patrol Manual and Standard Operating Procedures Manual and, at a minimum, shall include the following:

##### **a. Equipment & Supplies (Required)**

1. Wheel lift towing equipment, with a minimum lift rating of 4,000 pounds, with wheel lift extended. All tow equipment shall include proper safety straps.
2. Boom with a minimum static rating of 8,000 pounds.
3. Winch Cable - 8,000 pound rating on the first layer of cable.
4. Wire rope - 100ft., 3/8 inch diameter, 6 x19 or OEM specifications.
5. Two (2) Tow chains 3/8" alloy or OEM specs., J/T hook assembly.
6. Rubber faced push bumper.
7. Mounted spotlight capable of directing a beam both front and rear.
8. Amber warning lights with front and rear directional flashing capability, with

- on/off switch in cab.
9. Public address system.
10. Power outlets ("hot boxes"), front and rear mounted, with outlets compatible to 12-volt booster cables.
11. Heavy duty, 60+ amp battery.
12. Radios with the ability to communicate with the Contractor's base office (Verizon).
13. Programmable scanners capable of scanning between the 39 and 48 MHz used by the CHP. Scanners need to be capable of scanning CHP Police frequencies, and must be mounted for safety concerns.
14. Suitable cab lighting.
15. Trailer hitch capable of handling a 1 7/8-inch ball and 2 inch ball.
16. One (1) 1 7/8-inch ball and one (1) 2 inch ball.
17. Rear work lights. (4)
18. Safety chain D-ring or eyelet mounted on rear of truck.
19. Motorcycle straps. (2)
20. Diesel fuel in plastic jerry cans. (5 gallons)
21. Unleaded gasoline in plastic jerry cans. (5 gallons)
22. Safety chains min. 5ft. min. 5/16" Alloy or OEM Spec. (2)
23. First aid kit (small 5" x 9"). (1)
24. Fire extinguisher aggregate rating of at least 4 B-C units. (1)
25. Pry bar - 36" or longer. (1)
26. Radiator water in plastic container. (5 gallons)
27. 4" x 4" x 48" wooden cross beam. (1)
28. 4" x 4" x 60" wooden cross beam. (1)
29. 24" wide street broom. (1)
30. Square point shovel. (1)
31. Highway flares 360 minutes min.
32. Cones 18" height, reflectorized with tape.
33. Hydraulic Floor Jack: 2-ton AND
34. 2-ton jack stand
35. Wheel chock
36. Four-way lug wrench (1 std.). (1)
37. Four-way lug wrench (1 metric). (1)
38. Rechargeable compressor or refillable air bottle, hoses and fittings to fit tire valve stems, 100 psi capacity. (1)
39. Flashlight and spare batteries. (1)
40. Flashlight and spare batteries or charger (1)
41. Tail lamps/stop lamps, portable remote with extension cord. (1 set)
42. Booster cables, 25 ft. long minimum, 3-gauge copper wire with heavy-duty clamps and one end adapted to truck's power outlets. (1 set)
43. Funnel, multi-purpose, flexible spout. (1)
44. Pop-Up dolly (with tow straps), minimum rating of 3,900 pounds portable for removing otherwise un-towable vehicles. (1)

- 45. Dolly steel pry bar (1)
- 46. 5-gallon can with lid filled with clean absorb-all. (1)
- 47. Empty trash can with lid (5 gallon). (1)
- 48. Lock out set. (1)
- 49. Safety glasses.

b. Equipment & Supplies (Recommended)

- 50. Towing slings rated at 3,000 pounds minimum. **RECOMMENDED**
- 51. Sling crossbar spacer blocks. **RECOMMENDED** (2)

c. Tools (Required)

Each FSP truck will be required to have a toolbox with the following minimum number of tools/supplies. A tool kit for small equipment items is required. The list may be supplemented at the Contractor's option and expense.

- 52. Screwdrivers--
  - i. Standard-1/8", 3/16", 1/4", 5/16" (1 each, min).
  - ii. Phillips head - #1 and #2 (1 each, min).
- 53. Needle nose pliers (1)
- 54. Adjustable rib joint pliers, 2" min. capacity (1)
- 55. Crescent wrench - 8" (1)
- 56. Crescent wrench - 12" (1)
- 57. 4 lb. hammer (1)
- 58. Rubber mallet (1)
- 59. Electrical tape, roll (1)
- 60. Duct tape, 20 yard roll (1)
- 61. Tire pressure gauge (1)
- 62. Mechanic's wire (roll) (1)
- 63. Bolt cutters (1)

## 4.2 Tow Truck Appearance

FSP vehicles bearing the FSP title, logo, and vehicle identification number shall be painted white (includes the hood, fenders, doors, boom, and bed area – the entire truck is to be painted white). No trim is allowed. Lettering shall be in a blocked bold style parallel to the ground and shall be no less than 2 inches by 2 inches and no greater than 4 inches in height. Lettering can only be black in color (no other colors will be permitted). Letters shall be placed on the lower body of the truck toward the cab. Contractor's name on the boom is prohibited. The overall look of the truck must be approved by CHP prior to service implementation; therefore, any questions regarding this policy may be discussed with CHP prior to implementing, as truck compliance with current state FSP standards is required. No other accessory equipment, signage, or advertisements (mud flaps, stickers, employment advertisement, and so forth) shall be mounted or installed without prior CHP approval. This includes, but is not limited to: bras or window tint.

It shall be the vehicle operator's responsibility to place detachable FSP markings on each vehicle during FSP service hours and to remove the detachable markings immediately upon completion of each shift. RCTC will supply each Contractor with the appropriate number of detachable markings for each Beat(s). If a marking is lost or damaged, the Contractor shall be responsible for the cost of the replacement markings. All FSP markings shall be returned at the termination of the contract. The cost of any RCTC and/or Caltrans/CHP supplied item and/or equipment not returned shall be deducted from the Contractor's final payment.

FSP markings, as well as vehicle numbers, shall be required on both sides of all trucks. The detachable markings (magnetic FSP signage) provided by RCTC, must be placed on the center of the driver and passenger doors of the vehicle. The vehicle operator shall be required to keep the title and logos clean, straight, and in readable condition throughout the FSP shift. The operator is also required to keep the magnetic signage flat (do not bend in any way), clean, and out of direct sunlight while being stored during non-FSP operational hours.

#### 4.3 Vehicle Inspections

Prior to commencement of service, the CHP will inspect each vehicle designated for the FSP to ensure that it meets the vehicle specifications and to ensure that it meets or exceeds safety requirements. These inspections will occur prior to the start of service. Succeeding inspections will occur periodically as determined by the CHP. Documentation of the vehicle identification number and successful completion of the inspection will be kept on file at the CHP office and Contractor's base office.

Any unsafe, poorly maintained, or improperly equipped vehicle(s) shall be removed from service, and if discovered to be in such a condition during the shift said vehicle(s) shall be removed from service or repaired as directed by the CHP, and **the Contractor shall be fined three (3) times the hourly contract rate in one (1) minute increments for the remainder of that shift, plus the loss of revenue for the down time.** Spare vehicles, also known as "back-ups", will be required to complete the shifts of vehicles removed from service. The Contractor will be required to have a spare FSP vehicle available for service for the duration of each and every FSP shift.

The vehicle operator shall be required to complete a pre-operation shift inspection log of the vehicle as well as inventory the required equipment prior to the start of each and every shift. The vehicle operator shall be required to complete a driver log, which is used to track the mileage. A shift inspection/inventory log shall be completed by the vehicle operator prior to the start of each shift and be available for inspection. Any item missing must be replaced prior to the start of the shift. All equipment stored on top of the truck shall be secured to the truck.

#### 4.4 Spare/Back-Up Vehicles

The Contractor shall be required to have one FSP Certified Back-Up tow truck available per

Beat during FSP service hours that is in full compliance with the agreement, unless otherwise authorized by RCTC and CHP in writing. During FSP service hours, the spare vehicle shall be kept at the Contractor's yard or staged adjacent to the assigned beat. The FSP Certified Back-Up tow truck should be used when a Certified Primary FSP tow truck is unavailable. The FSP Certified Back-Up tow truck shall meet the same requirements for equipment, set-up, and color as the Certified Primary FSP tow truck. It shall meet all the vehicle equipment specifications. Refer to Attachment H for further details on violations and penalties.

#### **4.5 Vehicle Breakdown and Other Missed Service**

The spare vehicle must be in service on the Beat within 45 minutes of the time a permanently dedicated vehicle is taken out of service for any reason. The Contractor shall not be paid for the time period that the contractually required trucks are not in service. **If a vehicle is not made available within the required 45-minute time period, the Contractor shall be fined three (3) times the hourly contract rate in one (1) minute increments for every minute that exceeds the 45 minute replacement period until a certified FSP compliant spare/back-up vehicle is provided. If a truck is not ready due to breakdown at the start of a shift, the fine time will be calculated from the start of the shift until a replacement is placed into service. If the entire shift is missed, Contractor shall be fined for the entire shift at three (3) times the hourly rate times the total minutes for the affected shift.**

**Vehicle maintenance shall be performed during non-FSP service hours. In addition, not having a certified FSP "spare or back-up" vehicle operator available is not an allowable excuse for not having a spare (back-up) vehicle on the beat within the 45-minute time period. If the Contractor does not have a dedicated or spare truck on the Beat because a certified FSP vehicle operator is not available, the Contractor shall be fined three (3) times the hourly contract rate in one (1) minute increments until a certified FSP replacement vehicle operator is provided. If the entire shift is missed because a vehicle operator was not available, the Contractor shall be fined for the entire shift at three (3) times the hourly rate times the total minutes for the affected shift.**

### **5.0 Communications Equipment and Computers**

#### **5.1 Communications Equipment**

Each FSP vehicle shall be equipped with various communication devices that will enable the vehicle operator to communicate with the CHP Communications Center. All vehicles shall be equipped with an Automatic Vehicle Location (AVL) system, radios, and Data Collection Devices (DCD). The AVL system, radio, and DCD equipment shall be purchased, owned, and supplied by RCTC. RCTC shall select the equipment installation vendor.

The Contractor shall be responsible for maintaining the security of the vehicle communication equipment provided by RCTC. The Contractor shall be liable for any



damage to the RCTC-owned communication equipment. The Contractor shall also be liable for the full replacement value of the communication equipment installed in the trucks while in the care, custody, and control of the equipment. RCTC will deduct repair fees as well as the full replacement cost of any RCTC equipment due to improper use or negligence by the Contractor, from any payment due to the Contractor. RCTC-supplied vehicle communications equipment shall be returned in full working condition upon contract termination. The cost of any equipment not returned within a reasonable time period shall be deducted from the Contractor's final payment.

Programmable scanners capable of scanning between the 39 and 48 MHz used by CHP shall be supplied by the Contractor and shall be installed (mounted) in all vehicles.

The Contractor is also required to use Verizon wireless cell phones with push-to-talk-plus capability, or equivalent, for communications with the CHP Communications Center and the CHP Field Supervisor. Wireless cell phones shall be purchased and maintained by the Contractor. The Contractor will also be responsible for all operating costs as well. In addition, tow operators are not permitted to take pictures, video, or capture any other images while performing FSP duties during FSP operational hours. These actions will not be tolerated and a vehicle operator may be terminated if it is discovered they are doing so.

In addition, any input of data into the DCD shall not be allowed while the vehicle is being operated/driven. Use of other devices while driving/operating a vehicle such as cell phones is prohibited by California State Law.

The FSP vehicles shall be equipped with a public address system. The public address system shall have the capability for the driver of the disabled vehicle to hear instructions transmitted from the cab of the FSP vehicle when the FSP vehicle is directly to the rear of the disabled vehicle.

## **5.2 Computer Equipment**

The Contractor must have and maintain a desktop computer workstation with high-speed internet access and email to communicate with RCTC staff.

The Contractor must ensure that the DCD equipment is inspected and cleaned on a quarterly basis, or more frequently if needed. All DCD equipment should have the exterior protective case cleaned (protective outside case) and screen protector shall be inspected for functionality and serviceability. Worn items shall be immediately reported to RCTC.

All DCD equipment must be kept in a secure location. **During non-FSP operational hours, DCD equipment shall not be left in a tow vehicle or go home with a vehicle operator or anyone else.** All DCD equipment must be in a designated charging area at the tow operator's facility during non-FSP operational hours. The DCD equipment shall always have enough charge to complete each shift. In order to reduce instances of technology glitches, the DCD equipment shall be turned off/turned on at least once per week. DCD equipment

is to be with the vehicle operator in their FSP truck during FSP operational hours. Any other location shall not be permitted.

The Contractor shall immediately report any issues with the workstation or the DCD equipment to the RCTC FSP Program Manager or one of the FSP CHP Officers. Contractor is directly responsible to ensure their computer workstation is operating and **has internet access at all times** – this is a contract requirement.

The Contractor shall provide access to the DCD equipment for RCTC staff, or their designated designee, at **any time** during the course of the Contract. **In addition, the Contractor shall also make the workstation available to RCTC, or its designee, 30 calendar days prior to the start of the new service.**

The Contractor shall provide an annual inspection report to RCTC indicating the status of all equipment. RCTC will provide the submittal form. Tow operators should consider the accurate completion and timely return of this form as part of their contract requirements.

### **5.3 Equipment Tampering**

Tampering with FSP communication/tracking equipment so that it does not function properly to RCTC's specifications, and/or is disconnected or moved (without FSP Management authorization) from its original installed location is strictly prohibited. This includes but is not limited to: breaking evidence tape/connection sealer on equipment connections, cutting wires or cables, moving mounted equipment (speakers, microphones, antennas, etc.), rerouting any wiring, disconnecting any connectors, Contractor/subcontractor unintentionally altering equipment or connections to equipment during vehicle maintenance or repair, or interfering with the operations of the equipment.

If tampering is suspected, FSP Management may conduct an inspection of the equipment on the Beat or the vehicle may be sent to a designated location determined by FSP Management.

1. If tampering is found while the vehicle is used during FSP operational hours, the vehicle operator and vehicle will be immediately taken out of service and the Contractor shall be fined in one (1) minute increments at three (3) times their hourly rate, until such time that the back-up truck is deployed. Please note that if tampering is discovered, the penalties (three times the hourly rate in one minute increments) shall begin immediately upon the discovery of the tampering. The normal 45-minute back-up truck time allowance will not be considered "non-penalty" time under these circumstances. The penalties shall begin immediately upon the tampering being discovered.
2. If the vehicle is suspected to have equipment that has been tampered with, it may be sent to a designated location determined by FSP Management and CHP for an inspection. If tampering is found, the Contractor will be retroactively fined three (3) times the hourly rate in one (1) minute increments from the time the tampering

was first suspected. The penalties will continue until a certified FSP back-up truck is deployed. The normal 45-minute back-up truck time allowance will not be considered “non-penalty” under these circumstances.

#### **Tampering Repairs**

If tampering is discovered during FSP operational hours, the vehicle will be taken out of service and will remain out of service until the repair and the documentation can be completed by the FSP Program designated technician. FSP Management determines the designated technician. The transportation, labor, and repair costs will be the responsibility of the Contractor. Costs incurred to repair and document the equipment will be deducted from the Contractor monthly invoice.

#### **Tampering Penalties**

The Contractor will also be assessed a \$250 fine (whether the tampering is discovered while on the Beat, or if it was suspected and later confirmed) per incidence on their monthly invoice. If it is determined that the vehicle operator tampered with the equipment, the vehicle operator will be suspended for a minimum of 30 days for the initial tampering offense and subject to termination from the FSP Program for any subsequent tampering violations.

### **6.0 Contractor Responsibilities**

#### **6.1 Appearance at Hearings**

If and when required by SAFE, Contractor shall render assistance at public hearings or other meetings related to the performance of the Services.

#### **6.2 Damage Complaints**

Upon receiving a damage complaint from a motorist assisted by the Contractor, that the Contractor damaged their vehicle while lending assistance, the Contractor shall notify CHP immediately regarding the nature of the damage complaint and its disposition. The Contractor shall reply to the motorist by telephone within twenty-four (24) hours of receiving the damage complaint notification from CHP. If necessary, the Contractor shall send either his or her authorized representative or his or her insurance company representative to inspect the vehicle and complete an incident report within forty-eight (48) hours after receiving the damage complaint. If the investigation shows that damage to the vehicle could have been caused by the Contractor, the Contractor shall negotiate in good faith to try and resolve the issue and shall report to CHP the result of the negotiations. All complaints shall be resolved within a reasonable time-period after being received.

#### **6.3 Complaint Review Committee**

The FSP Technical Advisory Committee (“FSP TAC”) is composed of voting members from CHP, SAFE, and Caltrans. Voting members of the FSP TAC are hereby designated as the members of the Damage Complaint Review Committee (“DCRC”). If the DCRC finds that

justifiable complaints are not resolved within a reasonable timeframe, it can recommend that payment to the Contractor in the amount of the damage claim may be deducted from the Contractor monthly invoice.

#### **6.4 Trend Meetings**

Contractor shall attend, or send a designated management-level representative, to all trend meetings (i.e. required FSP TAC meeting which meets every other month). These trend meetings will encompass focused and informal discussions concerning, but not limited to: scope, Services, schedule, current progress of Services, relevant cost issues, and future objectives. Contractor shall be responsible for having a representative attend all meetings (i.e. FSP TAC meetings) that has the ability to make management-level decisions on the behalf of the Contractor. If the Contractor cannot have a management-level representative at a meeting, Contractor shall notify SAFE and CHP prior to the meeting. Management-level attendance at these meetings shall be considered part of the Contractor's contractual responsibility. Meetings are scheduled, and Contractor will be notified of such schedule, no later than three (3) working days prior to the meeting.

### **7.0 Vehicle Operators**

#### **7.1 Operator Qualifications and Performance**

All potential vehicle operators shall be required to have a safe driving record and, at a minimum, a valid Class C driver's license. All vehicle operators shall be 18 years of age or older at the time of background check. Potential vehicle operators shall be subject to driving record and criminal background checks through the California Highway Patrol. Potential vehicle operators shall be sufficiently experienced in the tasks of tow truck operations and proficient with all required Freeway Service Patrol equipment to provide safe and proper service. Any certified vehicle operator from other FSP areas will be evaluated on a case-by-case basis. All potential vehicle operators must be capable of demonstrating their tow operating abilities prior to formal CHP training, also known as proficiency testing.

Additionally, the vehicle operators will be required to exercise good, sound judgment in carrying out their duties. Vehicle operators shall be required to inform the CHP Communications Center any time they leave the assigned Beat. This includes breaks and replenishing expendable items, such as: gasoline, fire extinguisher, etc. The vehicle operator shall be required to immediately notify the CHP Communications Center upon a tow truck breakdown.

FSP vehicle operators will be responsible for accurately entering the required data into DCD equipment every shift. Each FSP vehicle operator shall complete an inspection worksheet prior to the commencement of driving the tow truck and a mileage log prior to beginning service on the Beat. The FSP vehicle operator shall be required to complete an assist record for each incident. Each assist record should be accurate. Contractors or Operators providing false or misleading information to FSP Management shall be subject to disciplinary action and will be handled on a case-by-case basis.

FSP vehicle operators shall always complete the required procedures per the SOP when handling required forms. No duplicate survey numbers should be entered into the DCD equipment at any time. Vehicle operators are required to complete in their entirety the Release of Liability form and Damage Release form when applicable. These completed forms should be handed in to RCTC at a minimum every 60 days. If it is discovered that a vehicle operator has entered duplicate survey numbers, not properly completed the release forms, or not turned the release forms in timely, the Contractor may be subject to penalties as outlined in Proposal Pricing Form.

CHP, Caltrans, and RCTC maintain strict drug and alcohol policies. Contractors shall have an alcohol and drug program that includes at a minimum, a drug and alcohol free workplace policy and an employee alcohol/drug-testing program. Any FSP vehicle operator found working under the influence of drugs or alcohol shall be immediately removed from the FSP program by the Contractor. The Contractor shall be responsible for providing a certified replacement vehicle operator for that vehicle.

The Contractor shall be an active participant in the **DMV Pull Notice Program**.

If a vehicle operator is convicted of a crime involving a stolen vehicle, stolen property, violence, drugs, or moral turpitude, fraud related to the towing business, or misdemeanor or felony driving while under the influence of alcohol or a drug, the Contractor shall permanently remove that vehicle operator from duties under the FSP program. If a vehicle operator is charged with any of the above crimes, the Contractor shall immediately suspend that vehicle operator from duties under this program pending the outcome of the criminal case. If the vehicle operator is not convicted, or is ultimately convicted of a lesser crime not described above, RCTC retains the right to have the Contractor remove that vehicle operator from the duties under the FSP program.

## **7.2 Operator Training**

At the Contractor's expense, all company owners, FSP vehicle operators, and back-up vehicle operators shall be required to present a certificate of completion of a SHRP 2/TIMS training course and to complete the CHP two-day training program which costs approximately \$50.00 per vehicle operator (fee is for the DL64 Tow Truck Driver Certificate and fingerprinting). Contractors shall pay all FSP operators and back-up vehicle operators for attending the training. No vehicle operator will be allowed to begin patrolling without meeting the requirements set forth in the SOP. Any vehicle operator who is found on patrol not meeting the requirements may be prohibited from further FSP service and the Contractor's contract may be terminated immediately.

Mandatory CHP refresher training classes shall be attended. A **minimum** of four (4) hours refresher training per year shall be required (at Contractor's expense). **Contractors shall pay all FSP vehicle operators and back-up vehicle operators for attending the required training.**

Vehicle operators will be required to utilize DCD equipment to input information about mileage, inspection, and each assist, which will include: location, vehicle make, model, license number, type of assistance provided, etc. Vehicle operators will be trained on using DCD equipment to enter data.

### **7.3 Operator Driving Record and Criminal History Check**

As required by California Vehicle Code Section 2340, all applicants and owners are required to have a driver's license and criminal history check. Only after a completed CHP 234F is received and accepted by CHP, a driver's license and preliminary criminal history check will be performed.

The driver's license check will consist of confirming that the applicant has a valid driver's license and the applicant's point count is within standards set forth in this SOP (refer to Chapter 11, Annex A).

The preliminary criminal history check will consist of a preliminary background check to determine if the applicant meets the criteria for a California Tow Truck Driver Certificate as outlined in California Public Resources Code Section 5164, California Vehicle Code Section 13377 and the FSP Contract. In addition, RCTC or the CHP may, in its sole discretion, require an Employer to replace any vehicle operator or reject a potential vehicle operator who it determines is not suitable to represent the FSP Program with the public. If the applicant passes the preliminary criminal history check, the applicant shall submit to fingerprinting.

Driver's license and preliminary criminal history checks will be completed by CHP within ten (10) working days of the acceptance of a CHP 234F.

### **7.4 Vehicle Operator Uniform**

It shall be the responsibility of the Contractor to provide the vehicle operator with specified uniforms, black protective toe boots, nameplate, gloves and other equipment. The equipment includes navy blue coveralls or navy blue shirts and pants. If coveralls are worn, they shall have a collar with a zip front. Optionally, drivers may wear a standard navy blue (long-sleeve only) uniform shirt, with a fluorescent orange (must be only 2.5" wide) trim, with a ½" silver reflective tape down the middle. This allowed reflective tape must be on both sleeves. All uniforms shall be clean, properly maintained, and replaced whenever excessively worn.

Sleeves and pant legs shall be moderately tapered to avoid excessive fullness.

A safety vest with reflective stripes shall be worn and supplied by RCTC. RCTC will supply vests with the FSP logo patches already sewn on per CHP's required patch placement locations. A FSP logo patch is not required to be sewn on the navy blue FSP vehicle operator uniform.

A detachable brass or gold nameplate shall be worn with the first initial of the first name and full last name. Letters shall not exceed ½" tall. The nameplate shall be worn above the

right chest pocket on the safety vest. The Contractor is responsible for obtaining FSP CHP approval of the driver nameplates, and the Contractor is responsible for the purchase and replacement of the FSP vehicle operator nameplate.

All FSP vehicle operators shall wear general duty black work boots with protective (steel or composite) toe.

During cold weather, a navy blue sweater or sweatshirt may be worn under the uniform shirt/coveralls. As an option, a navy blue jacket may also be worn, if it meets all the uniform specifications and is worn under the safety vest. Rain gear, if worn, shall be waterproofed material and navy blue or yellow in color.

Hats, if worn, shall be baseball-type caps and navy blue in color. An "FSP" logo patch may be sewn on the hat above the brim. No other logos/names shall be accepted. A beanie may also be worn which must be navy blue in color and worn only with a jacket or long sleeve shirt under the vest.

**Contractor should refer to the most current SOP to ensure they are following the most recent requirements.** SOP revisions and updates shall be unilaterally issued by RCTC, as deemed necessary by RCTC management, and all changes, revisions and updates to the SOP, if any, shall supersede all previous or existing SOPs. A copy of the SOP is included as part of the original RFP package.

## **7.5 Local Office**

The Contractor shall provide a local office for contract administration purposes. This office shall be staffed by either the Contractor or a person who has the authority to conduct business and make decisions on behalf of the Contractor. The office shall have business hours coinciding with Contractor's Beat(s) hours of operation. Through the Proposal document shown in the Contractor Representative Form, the Contractor shall designate representatives who will be available at the office during hours of operation to make decisions on behalf of the Contractor. The office shall be established within close proximity to the Contractor's Beat(s) and the County of Riverside. Also note in the Scope of Services, Section 4.4, **a backup vehicle and a certified FSP vehicle operator must be available within a 45-minute request of the Beat area.**

This requirement may also determine if the local office is close enough to satisfy the requirements under this section.

The Contractor shall also provide **telephone and email** through which he/she, or a responsible representative who has the authority to conduct business and make decisions on behalf of the Contractor, can be contacted during the non-service hours of operation for the length of the contract. During non-business hours, an answering machine provided at the Contractor's expense, shall be available to log calls, take complaints, etc. **An email address that is monitored daily** shall be provided for notification purposes during operational and non-service hours. The Contractor will be responsible for having a company representative monitor and review messages/notices on a daily basis.

## 7.6 Remedies and Liquidated Damages

RCTC has a need to deal contractually with a range of failures by Contractors to meet contractual standards and requirements short of suspension or termination. Failure to meet contractual standards and requirements constitute a default under the contract and is subject to the various remedies provided in the contract, up to and including termination of the contract.

It is clear that any default that is related to service or contractor's readiness for service will either degrade service or lead to the degradation of service. The failure to meet contractual standards and requirements, therefore, causes damages to the FSP program and its participants (RCTC, CHP and Caltrans) and to the public being served by the FSP program. Because of the public service nature of the mission of the FSP, described generally in the Standard Operating Procedures (SOP), to keep traffic and commerce flowing on the regional freeways, the damages arising from contractor's failure to meet the contractual standards and requirements are impractical or extremely difficult to ascertain on an individual basis.

The contract has therefore established a series of remedies to attempt to deal with a range of defaults. The most egregious default will result in suspension or termination. Lesser defaults will result in the assessment of liquidated damages. These lesser remedies have been described in the SOP as fines, violations or penalties. This is not a correct characterization of the intent of the remedies. The remedies arise because the contractor is in default and the FSP and the public it serves is damaged by that default. The remedies are to compensate FSP for its damages and to encourage compliance with performance requirements of the contract.



**EXHIBIT “B”**

**Compensation and Payment**

**[INSERT FINAL PRICE PROPOSALS FROM CONTRACTOR’S PROPOSAL]  
And MOBILIZATION COST PAYMENT FORM, IF APPLICABLE**

DRAFT



**RIVERSIDE COUNTY TRANSPORTATION COMMISSION, ACTING AS THE RIVERSIDE  
COUNTY SERVICE AUTHORITY FOR FREEWAY EMERGENCIES,  
FOR  
FREEWAY SERVICE PATROL FOR THE EXPRESS LANES WITHIN RIVERSIDE COUNTY  
WITH ROYAL COACHES AUTO BODY AND TOWING**

**1. PARTIES AND DATE.**

1.1 This Agreement is made and entered into as of \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("COMMISSION") acting as the RIVERSIDE COUNTY SERVICE AUTHORITY FOR FREEWAY EMERGENCIES ("SAFE") and **ROYAL COACHES AUTO BODY AND TOWING**, a California corporation (referred to herein as "CONTRACTOR"). SAFE and CONTRACTOR are sometimes individually referred to herein as "Party" and collectively as "Parties".

1.2 The California Highway Patrol herein referred to as "CHP" and California Department of Transportation, herein referred to as "Caltrans" are hereby expressly designated as third-party beneficiaries of CONTRACTOR's performance under this Agreement.

**2. RECITALS.**

- 2.1 **WHEREAS**, COMMISSION is a California County Transportation Commission existing under the authority of Section 130050 et seq. of the California Public Utilities Code;
- 2.2 **WHEREAS**, COMMISSION is authorized, pursuant to Section 2550 et seq. of the California Streets and Highways Code, to act as SAFE for purposes of providing a motorist aid system, including provision of freeway service patrols;
- 2.3 **WHEREAS**, SAFE requires the services of a CONTRACTOR to provide the freeway service patrol professional services as described in the Scope of Services;
- 2.4 **WHEREAS**, SAFE has determined that CONTRACTOR is best qualified to perform the required services;
- 2.5 **WHEREAS**, the CONTRACTOR is able and willing to perform the required services under the terms and conditions of this Contract;
- 2.6 **WHEREAS**, COMMISSION is the short range transportation planning agency for Riverside County, and programs federal, state, and local funds. COMMISSION has entered into a Memorandum of Understanding with

Caltrans and CHP to fund peak period freeway service patrols on selected freeway segments in Riverside County; and

- 2.7 **WHEREAS**, Section 21718 (a) of the California Vehicle Code specifically authorized CHP to be responsible for freeway service patrols stopping on freeways for the purpose of rapid removal of impediments to traffic. Article 3, Section 91, of the Streets and Highways Code, states that Caltrans has responsibility to improve and maintain the state highways. Caltrans also has the responsibility for traffic management and removing impediments from the highways.

NOW, THEREFORE, for the consideration hereinafter stated, SAFE and CONTRACTOR agree as follows:

### 3. TERMS.

3.1 General Scope of Services. The purpose of the Freeway Service Patrol ("FSP") program is to provide for the rapid removal of disabled vehicles and vehicles involved in minor accidents from the freeway. Contractor promises and agrees to furnish to SAFE all labor materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately provide the FSP services ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules and regulations, and the SOP manual (as defined below).

3.1.1. Contract Oversight. Caltrans and CHP will jointly oversee the Services. Both agencies will have responsibility for overseeing Service performance and ensuring that the CONTRACTOR abides by the terms of this Contract. CHP is responsible for dispatch services to incident locations within the CONTRACTOR's patrol limits. The dispatching will be done in accordance with this Contract. A Standard Operating Procedures ("SOP") manual will be given to the CONTRACTOR explaining the types of incidents to which his/her operators may be dispatched.

3.1.2 Beat Descriptions. The FSP will operate on selected freeway segments referred to herein as "beats". Each beat has specific turnaround locations and designated drop locations identified by the CHP. Exhibit "A" shows the specific limits, number of tow trucks, number of back-up trucks and hours of operation, and holidays for the CONTRACTOR's specific beat. SAFE reserves the right to add or delete holidays to the work schedule, provided that SAFE provides CONTRACTOR seven (7) days advanced notice of such addition or deletion. Travel time to and from the beat will be at the expense of the CONTRACTOR.

3.1.3 Change Orders. At any time during the term of this Contract, SAFE reserves the right to adjust beat specifications to better accommodate demand for the Services, or availability of funding, at no cost to SAFE. Adjustments may include reduction in the hours

of Services. SAFE may direct such adjustments during the course of this Contract through written change orders, signed by SAFE, setting forth any changes to Exhibit "A". Changes may include a change of the specified beat(s) to other beats that SAFE determines better serve the needs of SAFE, as well as changes to schedules and hours for the beats set forth in Exhibit "A". If warranted, as determined in SAFE's sole discretion, and during the hours of operation of the Services, the CONTRACTOR may be requested to temporarily reassign his/her FSP operators/trucks to locations outside the assigned beat. Such reassignments shall be at no cost to SAFE.

3.1.4. The SOP Manual. To promote a safe work environment and for the maintenance of professionalism, the most current version of the SOP manual shall, at all times, be followed by the CONTRACTOR and its vehicle operators. The SOP manual, as such manual may from time to time be amended, is incorporated into this Contract by reference. CONTRACTOR shall be notified and provided with a copy of any changes to the SOP manual. Drivers found not to be in compliance with FSP procedures, as set forth in the SOP manual or this Contract, may be suspended or terminated from the FSP program and the CONTRACTOR may be fined three (3) times the hourly Contract rate in one (1) minute increments until a replacement vehicle is provided (Driver and Truck must return to beat compliant with all FSP requirements), or fined for the entire shift at three (3) times the hourly rate at the discretion of the FSP Field Supervisors.

3.2 Equipment Requirements. CONTRACTOR shall comply with all equipment requirements outlined in the attached Exhibit "A".

3.3 Commencement of Services. The CONTRACTOR shall commence work upon receipt of a written Notice to Proceed from SAFE.

3.4 Term. The term of this Contract shall be for a period of five (5) years, from **April 3, 2023 to March 31, 2028** unless earlier terminated as provided herein. SAFE shall also have the right to renew this Contract from one month up to a one (1) year term after the initial term by providing notice as provided below. SAFE must provide written notice to CONTRACTOR no less than ninety (90) days prior to the end of the applicable term, indicating its renewal of the Contract. CONTRACTOR shall complete the Services within the term of this Contract, and shall meet any other established schedules and deadlines. All applicable indemnification provisions of this Contract shall remain in effect following the termination of this Contract. The rates shall be as follows:

#### SCHEDULE OF HOURLY RATES

Classification	Years 1-2	Year 3-4	Year 5
Regular Rate	\$ 124.64 per hour	\$ 131.93 per hour	\$ 135.85 per hour
CFSP/Extra Rate	\$ 137.10 per hour	\$ 145.12 per hour	\$ 149.43 per hour

3.5 SAFE's Representative. SAFE hereby designates the SAFE Executive Director or his or her designee, to act as its Representative for the performance of this Contract

("SAFE's Representative"). SAFE's Representative shall have the authority to act on behalf of SAFE for all purposes under this Contract. SAFE's Representative shall also review and give approval, as needed, to the details of CONTRACTOR's work as it progresses. CONTRACTOR shall not accept direction or orders from any person other than the SAFE's Representative or his or her designee.

3.6 CONTRACTOR'S Representative. CONTRACTOR hereby designates **WILLIAM SALAZAR, PRESIDENT AND CEO**, to act as its representative for the performance of this Contract ("CONTRACTOR's Representative"). CONTRACTOR's Representative shall have full authority to act on behalf of CONTRACTOR for all purposes under this Contract. The CONTRACTOR's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Contract. CONTRACTOR shall work closely and cooperate fully with SAFE's Representative and any other agencies which may have jurisdiction over or an interest in the Services. CONTRACTOR's Representative shall be available to the SAFE staff at all reasonable times. Any substitution in CONTRACTOR's Representative shall be approved in writing by SAFE's Representative.

3.7 Substitution of Key Personnel. CONTRACTOR has represented to SAFE that certain key personnel will perform and coordinate the Services under this Contract. Should one or more of such personnel become unavailable, CONTRACTOR may substitute other personnel of at least equal competence upon written approval by SAFE's Representative. In the event that SAFE's Representative and CONTRACTOR cannot agree as to the substitution of the key personnel, SAFE shall be entitled to terminate this Contract for cause, pursuant to the provisions of Section 3.15. The key personnel for performance of this Contract are: **JUAN PEREZ, FSP PROGRAM MANAGER.**

3.7.1 Availability of FSP Manager. Except in the case of unpreventable circumstances, the FSP Manager must be available at the CONTRACTOR's office for at least 50% of each Work Day to address time sensitive issues related to this Contract or the Services, including, but not limited to, FSP administrative responsibilities; SAFE, CHP, and Caltrans requests; driver matters; and truck maintenance issues. CONTRACTOR shall, within 24 hours, notify SAFE of each circumstance causing the FSP Manager not to be available as required herein. As used in this section, the term "Work Day" shall mean and refer to any day that FSP service is provided, during those hours of operation for Construction FSP as identified on the attached Exhibit "A-1".

3.8 Review of Work and Deliverables. All reports, working papers, and similar work products prepared for submission in the course of providing Services under this Contract may be required to be submitted to SAFE's Representative in draft form, and SAFE's Representative may require revisions of such drafts prior to formal submission and approval. In the event that SAFE's Representative, in his or her sole discretion, determines the formally submitted work product to be inadequate, SAFE's Representative may require CONTRACTOR to revise and resubmit the work at no cost to SAFE. Upon determination by SAFE that CONTRACTOR has satisfactorily completed the Services required under this Contract and

within the term set forth in Section 3.4, SAFE shall give CONTRACTOR a written Notice of Final Completion. Upon receipt of such notice, CONTRACTOR shall incur no further costs hereunder, unless otherwise specified in the Notice of Completion. CONTRACTOR may request issuance of a Notice of Final Completion when, in its opinion, it has satisfactorily completed all Services required under the provisions of this Contract.

3.9 Appearance at Hearings. If and when required by SAFE, CONTRACTOR shall render assistance at public hearings or other meetings related to the performance of the Services.

3.10 Standard of Care: Licenses. CONTRACTOR represents and maintains that it is skilled in the professional calling necessary to perform all Services, duties and obligations required by this Contract. CONTRACTOR shall perform the Services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. CONTRACTOR warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. CONTRACTOR further represents and warrants to SAFE that its employees and subcontractors have all licenses, permits, qualifications (including medical certification) and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Contract. CONTRACTOR shall perform, at its own cost and expense and without reimbursement from SAFE, any services necessary to correct errors or omissions which are caused by the CONTRACTOR's failure to comply with the standard of care provided for herein, and shall be fully responsible to SAFE for all damages and other liabilities provided for in the indemnification provisions of this Contract arising from the CONTRACTOR's errors and omissions. Any employee of CONTRACTOR or its subcontractors who is determined by SAFE to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to SAFE, shall be promptly removed from performing the Services by the CONTRACTOR and shall not be re-employed to perform any of the Services.

3.11 Opportunity to Cure. SAFE may provide CONTRACTOR an opportunity to cure, at CONTRACTOR's expense, all errors and omissions which may be disclosed during performance of the Services. Should CONTRACTOR fail to make such correction in a timely manner, such correction may be made by SAFE, and the cost thereof charged to CONTRACTOR.

3.12 Inspection of Work. CONTRACTOR shall allow SAFE's Representative to inspect or review CONTRACTOR's performance of Services in progress at any time. SAFE/Caltrans/CHP also reserves the right to audit all paperwork demonstrating that CONTRACTOR participates in an employee alcohol/drug-testing program and the DMV Pull Notice Program.

3.13 Laws and Regulations. CONTRACTOR shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. CONTRACTOR shall be solely liable for all violations of such laws

and regulations in connection with Services. If the CONTRACTOR performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to SAFE, CONTRACTOR shall be solely responsible for all costs arising therefrom. CONTRACTOR shall defend, indemnify and hold SAFE, their officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.14 Damage Complaints. Upon receiving a damage complaint from a motorist assisted by the CONTRACTOR, that the CONTRACTOR damaged their vehicle while lending assistance, the CONTRACTOR shall notify CHP immediately regarding the nature of the damage complaint and its disposition. The CONTRACTOR shall reply to the motorist by telephone within twenty-four (24) hours of receiving the damage complaint notification. If necessary, the CONTRACTOR shall send either his or her authorized representative or his or her insurance company representative to inspect the vehicle and complete an incident report within forty-eight (48) hours after receiving the damage complaint. If the investigation shows that damage to the vehicle could have been caused by the CONTRACTOR, the CONTRACTOR shall negotiate in good faith to try and resolve the issue and shall report to the CHP the result of the negotiations. All complaints shall be resolved within a reasonable period of time after being received.

3.14.1 Complaint Review Committee. The FSP Technical Advisory Committee ("FSP TAC") is composed of voting members from CHP, SAFE and Caltrans. Voting members of the FSP TAC are hereby designated as the members of the Damage Complaint Review Committee ("DCRC"). If the DCRC finds that justifiable complaints are not resolved within a reasonable time frame, it can recommend that payment to the CONTRACTOR in the amount of the damage claim may be deducted from the CONTRACTOR's monthly invoice.

3.15 Termination.

3.15.1 Notice; Reason. SAFE may, by written notice to CONTRACTOR, terminate this Contract, in whole or in part, including, without limitation, the geographical territory covered by this Contract, at any time by giving written notice to CONTRACTOR of such termination, and specifying the effective date thereof ("Notice of Termination"). Such termination may be for SAFE's convenience, due to lack of available funding for the Services, or because of CONTRACTOR's failure to perform its duties and obligations under this Contract, including, but not limited to, the failure of CONTRACTOR to timely perform Services pursuant to the Scope of Services described in Section 3, entitled "Terms," as well as Section 7 of the RFP. CONTRACTOR may not terminate this Contract except for cause.

3.15.2 Discontinuance of Services. Upon receipt of the written Notice of Termination, CONTRACTOR shall discontinue all affected Services as directed in the Notice of Termination, and deliver to SAFE all Documents and Data, as defined in this Contract, as may have been prepared or accumulated by CONTRACTOR in performance of the Services, whether completed or in progress.



3.15.3 Effect of Termination For Convenience. If the termination is to be for the convenience of SAFE, SAFE shall compensate CONTRACTOR for Services fully and adequately provided through the effective date of termination as provided in the Notice of Termination. Such payment shall include a pro-rated amount of profit, if applicable, up through such effective date, but no amount shall be paid for anticipated profit on unperformed Services past such effective date. CONTRACTOR shall provide documentation deemed adequate by SAFE's Representative to show the Services actually completed by CONTRACTOR prior to the effective date of termination. This Contract shall terminate on the effective date of the Notice of Termination.

3.15.4 Effect of Termination for Cause. If the termination is for cause, CONTRACTOR shall be compensated for those Services which have been fully and adequately completed and accepted by SAFE as of the effective date of termination as provided in the Notice of Termination. In such case, SAFE may take over the work and prosecute the same to completion by contract or otherwise. Further, CONTRACTOR shall be liable to SAFE for any reasonable additional costs or damages incurred to revise work for which SAFE has compensated CONTRACTOR under this Contract, but which SAFE has determined in its sole discretion needs to be revised, in part or whole. Termination of this Contract for cause may be considered by SAFE in determining whether to enter into future contracts with CONTRACTOR.

3.15.5 Cumulative Remedies. The rights and remedies of the Parties provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

3.15.6 Procurement of Similar Services. In the event this Contract is terminated, in whole or in part, as provided by this Section, SAFE may procure, upon such terms and in such manner as it deems appropriate, services similar to those terminated.

3.15.7 Waivers. CONTRACTOR, in executing this Contract, recognizes that the Services may be terminated, in whole or in part, as provided in this Section. CONTRACTOR shall not be entitled to any damages including, but not limited to, any compensation for costs incurred to procure vehicles, meet the terms for providing the Services, or for any other costs or expenses, and shall be deemed to have waived any and all claims for damages, costs or expenses which may otherwise arise from SAFE's termination of this Contract, for convenience or cause, as provided in this Section.

3.15.8 Authorization to Terminate. The Executive Director of SAFE shall have the full authority and discretion to exercise SAFE's rights under this Section 3.15, entitled "Termination".

3.16 Trend Meetings. CONTRACTOR shall attend, or send a designated management-level representative, to all trend meetings (i.e., required FSP TAC meeting which meets every other month). These trend meetings will encompass focused and informal discussions concerning, but not limited to: scope, Services, schedule, current progress of Services, relevant cost issues, and future objectives. CONTRACTOR shall be responsible for having a representative attend all meetings (i.e., FSP TAC meetings) that has the ability to make management-level decisions on the behalf of the CONTRACTOR. If the CONTRACTOR

cannot have a management-level representative at a meeting, CONTRACTOR shall notify SAFE and CHP prior to the meeting. Management-level attendance at these meetings shall be considered part of the CONTRACTOR's contractual responsibility. Meetings are scheduled, and CONTRACTOR will be notified of such schedule, no later than three (3) working days prior to the meeting.

### 3.17 Fees and Payment.

3.17.1 Amount to be Paid. Subject to the provisions set forth below for Services satisfactorily performed hereunder, SAFE shall pay the CONTRACTOR on a fixed unit rate basis a ceiling price NOT TO EXCEED **SEVEN MILLION SIX HUNDRED THIRTY-ONE THOUSAND THREE HUNDRED FOURTEEN DOLLARS (\$7,631,314).**

3.17.2 Maximum Payment is the Ceiling Price. SAFE shall not be obligated to pay costs which exceed the ceiling price set forth above, except as provided in Sections 3.15 and 3.17.10. CONTRACTOR agrees to use its best efforts to perform the services and all obligations under this Contract within such ceiling price.

3.17.3 Hourly Rate; Break and Meal Periods. For its performance of the Services, the CONTRACTOR shall be paid for labor expended directly in the performance of the Services at the rates specified below. Payments shall be made monthly in arrears based on Services provided and allowable incurred expenses. The CONTRACTOR shall not be entitled to reimbursements for any expenses unless approved in advance in writing.

#### SCHEDULE OF HOURLY RATES

Classification	Year 1	Year 2	Year 3	Year 4	Year 5
Regular Rate	\$ 124.64 per hour	\$ 124.64 per hour	\$ 131.93 per hour	\$ 131.93 per hour	\$ 135.85 per hour
CFSP/Extra Rate	\$ 137.10 per hour	\$ 137.10 per hour	\$ 145.12 per hour	\$ 145.12 per hour	\$ 149.43 per hour

Hourly rates may be adjusted as set forth in Chapter 9, Violations/Penalties, of the FSP Standard Operating Procedures (SOP).

A) CONTRACTOR is responsible for compliance with all California labor laws related to break periods and meal periods including, but not limited to, compliance with Labor Code section 512. CONTRACTOR shall be solely responsible for any additional pay to which its drivers may be entitled for CONTRACTOR's failure to comply with the California labor law requirements.

B) During shifts that require drivers to be provided a 30-minute meal period break pursuant to Labor Code section 512, CONTRACTOR shall either make arrangements for another certified driver to provide Services during those breaks or not be compensated for each 30-minute meal period break during which Services are not provided. In no case shall CONTRACTOR be entitled to bill RCTC for time during which a driver is taking a meal period break.

3.17.4 Payment Coverage. The compensation herein above specified will cover and include all applicable labor surcharges such as taxes, insurance and fringe benefits, as well as indirect costs, overhead, general and administrative expense, and profit.

3.17.5 Cost Principles.

A) CONTRACTOR agrees to comply with 2 CFR, Part 225, Cost Principles for State and Local Government, and 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

B) CONTRACTOR agrees that 1) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual cost items, and 2) CONTRACTOR shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

C) Any costs for which CONTRACTOR has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 225, 48 CFR, Chapter 1, Part 31 or 2 CFR, Part 200, are subject to repayment by CONTRACTOR to SAFE. Should CONTRACTOR fail to reimburse moneys due SAFE within 30 days of demand, or within such other period as may be agreed in writing between the Parties hereto, SAFE is authorized to intercept and withhold future payments due CONTRACTOR from SAFE or any third-party source, including, but not limited to, the State Treasurer, the State Controller, and the California Transportation Commission.

3.17.6 Fines. Fines for starting late; leaving early; taking more breaks than authorized; or being ordered out of service by a CHP, SAFE Representative or Caltrans supervisor for Contract infractions shall be deducted from the CONTRACTOR's monthly invoice at five (5) times the hourly rate, plus the loss of revenue for the down time. Fines may be further described in the attached Exhibit "A" or Exhibit "B".

3.17.7 Accounting System. CONTRACTOR and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate expenditures by line item for the Services. The accounting system of CONTRACTOR and its subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

3.17.8 Invoices. Invoices for CONTRACTOR's Services shall be submitted monthly on forms approved by SAFE. Invoices will be routinely verified by CHP. To ensure prompt payment, most billing disputes may be resolved within ten (10) working days of written notice of dispute. However, at SAFE's discretion, reconciliation of disputed fines that sum to less than 2% of the months' Invoice may be corrected on the next month's Invoice to ensure prompt payment of the major portion of the invoice. Each Invoice shall include a cover sheet bearing a certification as to the accuracy of the statement signed by the CONTRACTOR's

authorized officer. Invoices shall be mailed to SAFE's Contract Administrator at the following address:

Riverside County Service Authority for Freeway Emergencies  
FSP Program  
P.O. Box 12008  
Riverside, CA  
92502-2208  
Attn: Brian Cunanan

3.17.8.1 Monthly Progress Reports. As part of its Invoice, CONTRACTOR shall submit a Monthly Progress Report, in a form determined by SAFE, which will cover the Invoice period and include spreadsheets showing hours expended for each day of the month per vehicle per beat, and the total for the term of the Contract to date. Submission of such Monthly Progress Report by CONTRACTOR shall be a condition precedent to receipt of payment from SAFE for each monthly Invoice submitted.

3.17.8.2 Payment Schedule. Invoice periods shall be based upon a calendar month, beginning with the first day of the month. SAFE shall reimburse CONTRACTOR for Services adequately provided under this Contract within thirty (30) days of receiving the current period invoice with no errors. If the Invoice is completed incorrectly by the CONTRACTOR it will delay payment. If SAFE fails to pay any amount owed to CONTRACTOR under this Contract within thirty (30) days after receipt of the invoice, CONTRACTOR may give SAFE a notice of failure to pay which shall set forth the invoice(s) and amount(s) which CONTRACTOR believes are thirty (30) days overdue. SAFE shall pay any undisputed invoice(s) and amount(s) within thirty (30) days of receipt of a notice of failure to pay.

3.17.9 Right to Audit. For the purpose of determining compliance with this Contract and other matters connected with the performance of CONTRACTOR's contracts with third parties, CONTRACTOR and its subcontractors shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times for three years from the date of final payment of Funds to CONTRACTOR. SAFE, the State of California acting through the Department of Transportation or its duly authorized representative, the California State Auditor, or the United States Department of Transportation shall each have access to any books, records, and documents that are pertinent for audits, examinations, excerpts, and transactions, and CONTRACTOR shall furnish copies thereof if requested.

3.17.10 Taxes. CONTRACTOR shall pay any sales, use, or other taxes, if any, attributable to the provision of the Services.

3.17.11 Travel and Subsistence. Payments to CONTRACTOR for travel and subsistence expenses claimed for reimbursement or applied as local match credit shall not exceed rates authorized to be paid exempt non-represented State employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced are in excess

of those authorized DPA rates, then CONTRACTOR is responsible for the cost difference and any overpayments shall be reimbursed to SAFE on demand.

3.17.12 Employment Adverse to the SAFE. CONTRACTOR shall notify SAFE, and shall obtain SAFE's written consent, prior to accepting work to assist with or participate in a third-party lawsuit or other legal or administrative proceeding against SAFE during the term of this Contract.

3.17.13 Extra Work. At any time during the term of this Contract, SAFE may request CONTRACTOR to perform Extra Work. "Extra Work" shall mean any work which is determined by SAFE to be necessary for proper completion of the Services, but which the Parties did not reasonably anticipate would be necessary at the time of the execution of this Contract and was not included in the Scope of Services. Extra Work, if any, shall be reimbursed at the same hourly rate as identified in Section 3.17.3. CONTRACTOR shall not perform, nor be compensated for Extra Work without obtaining authorization in the form of a written Extra Work Order issued by SAFE's Representative. For instance, Construction FSP services as it relates to construction activity can be considered Extra Work. In the event an Extra Work Order is not issued and signed by SAFE's Representative, CONTRACTOR shall not provide such Extra Work. However, no compensation or reimbursement for Extra Work shall be paid if it is not authorized by SAFE and if the cumulative total of such Extra Work under the Contract exceeds \$25,000. All Extra Work in a cumulative total in excess of \$25,000 must be approved in advance by amendment to this Contract.

3.17.13.1 Extra Work Cancellation Policy. If a tow operator is scheduled for Extra Work and they are notified of a cancellation with **LESS than a 24 hour notice** – then the tow operator will be reimbursed for **three (3) hours** of the agreed upon contract hourly rate. *Note: The minimum of the three (3) hours should cover eight hours of the drivers' hourly wage.* Starting with "Less than a 24 hour cancellation notice" up to the time the tow operator is on the assigned Extra Work Beat, the "three contract hour cancellation rate" remains the same. Once the tow operator is on the Extra Work Beat, the cancellation policy changes.

If a tow operator begins the Extra Work (the truck is on the Beat) and is then notified that Extra Work has been cancelled, the FSP operator will be paid for the entire shift period **up to a maximum of eight (8) hours**. A shift period for this policy is defined as: the time period of the actual Extra Work shift assigned or for a maximum of eight (8) contract hours, whichever is less.

The supervising FSP CHP Officer for the Extra Work shift will make the final determination as to whether or not the tow operator will continue to work the Extra Work shift. Regardless, the tow operator will be reimbursed for the original shift period or a maximum of eight (8) hours, whichever is less.

3.17.14 Most Favored Customer. CONTRACTOR agrees that, throughout the term of this Contract, it shall not enter into any FSP services agreement with any government agency with whom it has either existing contractual relationship or has no contractual relationship that predates this Contract, pursuant to which CONTRACTOR agrees to charge FSP services fees less than those as indicated in this Contract for substantially the

same level of FSP services contemplated by this Contract. Should SAFE establish that such lower fees have been agreed to by CONTRACTOR with another government agency, CONTRACTOR agrees to renegotiate the fees or to refund SAFE an amount equal to the difference between the fees indicated in this Contract and the fees charged to other government agency customer.

### **3.18 Delay in Performance.**

3.18.1 Excusable Delays. Neither Party shall be considered in default in the performance of its obligations to the extent that the performance of any such obligation is prevented or delayed by an Excusable Delay. Should CONTRACTOR be delayed or prevented from the timely performance of any act or Services required by the terms of the Contract by an Excusable Delay, Contractor's schedule for completion of tasks affected by such delay may be extended as set forth in Section 3.18.2. But in every case, CONTRACTOR's failure to perform must be reasonably beyond the control, and without the fault or negligence of the CONTRACTOR. Excusable Delays are acts of God or of the public enemy, acts or omissions of SAFE or other governmental agencies in either their sovereign or contractual capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather.

3.18.2 Written Notice. If CONTRACTOR believes it is entitled to an extension of time due to conditions set forth in subsection 3.18.1, CONTRACTOR shall provide written notice to the SAFE within seven (7) working days from the time CONTRACTOR knows, or reasonably should have known, that performance of the Services will be delayed due to such conditions. Failure of CONTRACTOR to provide such timely notice shall constitute a waiver by CONTRACTOR of any right to an excusable delay in time of performance.

3.18.3 Mutual Contract. Performance of any Services under this Contract may be delayed upon mutual agreement of the Parties. Upon such agreement, CONTRACTOR's Schedule of Services (as defined in their Proposal) shall be extended as necessary by SAFE. CONTRACTOR shall take all reasonable steps to minimize delay in completion, and additional costs, resulting from any such extension.

### **3.19 Status of CONTRACTOR/Subcontractors.**

3.19.1 Independent Contractor. The Services shall be performed by CONTRACTOR or under its supervision. CONTRACTOR will determine the means, methods and details of performing the Services subject to the requirements of this Contract. SAFE retains CONTRACTOR on an independent contractor basis and not as an employee, agent or representative of the SAFE. CONTRACTOR retains the right to perform similar or different services for others during the term of this Contract. Any additional personnel performing the Services under this Contract on behalf of CONTRACTOR shall at all times be under CONTRACTOR's exclusive direction and control. CONTRACTOR shall pay all wages, salaries and other amounts due such personnel in connection with their performance of Services and

as required by law. CONTRACTOR shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, disability insurance, and workers' compensation insurance.

3.19.2 Assignment or Transfer. CONTRACTOR shall not assign, hypothecate, or transfer, either directly or by operation of law, this Contract or any interest herein, without the prior written consent of SAFE. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. Notwithstanding the foregoing, SAFE may transfer or assign any and all of its rights and obligations under this Contract, including, without limitation the rights to terminate this Contract, as assigned, pursuant to Section 3.15 hereof.

3.19.3 Subcontracting. CONTRACTOR shall not subcontract any portion of the work or Services required by this Contract, except as expressly stated herein, including the Scope of Services, without prior written approval of the SAFE. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Contract. SAFE shall have no liability to any subconsultant(s) for payment for services under this Contract or other work performed for CONTRACTOR, and any subcontract entered into by CONTRACTOR pursuant to the conduct of services under this Contract shall duly note that the responsibility for payment for the technical services or any other work performed shall be the sole responsibility of CONTRACTOR.

3.20 CONTRACTOR will maintain an inventory of all non-expendable equipment, defined as having a useful life of at least two years and an acquisition cost of \$500 or more, paid for with funds provided pursuant to this Contract.

3.21 Ownership of Materials and Confidentiality.

3.21.1 Documents & Data; Licensing of Intellectual Property. All plans, specifications, studies, drawings, estimates, materials, data, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings, spreadsheets, or data magnetically or otherwise recorded on computer diskettes, prepared by or on behalf of CONTRACTOR under this Contract ("Documents and Data"), shall be made available to SAFE at all times during this Contract and shall become the property of SAFE upon the completion of the term of this Contract, except that CONTRACTOR shall have the right to retain copies of all such Documents and Data for its records. Should CONTRACTOR, either during or following termination of this Contract, desire to use any Documents and Data, it shall first obtain the written approval of SAFE. This Contract creates a no-cost, nonexclusive, and perpetual license for SAFE to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in the Documents and Data which are prepared or caused to be prepared by CONTRACTOR under this Contract ("Intellectual Property"). CONTRACTOR shall require all subcontractors to agree in writing that SAFE is granted a no-cost, nonexclusive, and perpetual license for any Intellectual Property the subcontractor prepares under this Contract. CONTRACTOR

represents and warrants that CONTRACTOR has the legal right to license any and all Intellectual Property prepared or caused to be prepared by CONTRACTOR under this Contract. SAFE shall not be limited in any way in its use of the Intellectual Property at any time, provided that any such use not within the purposes intended by this Contract shall be at SAFE's sole risk.

**3.21.2 Confidentiality.** All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to CONTRACTOR in connection with the performance of this Contract shall be held confidential by CONTRACTOR to the extent permitted by law, including, without limitation, the California Public Records Act, Government Code section 6250 et seq. Such materials shall not, without the prior written consent of SAFE, be used by CONTRACTOR for any purposes other than the performance of the Services as provided herein. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services, except as provided herein. Nothing furnished to CONTRACTOR which is otherwise known to CONTRACTOR or is generally known, or becomes known, to the related industry shall be deemed confidential. CONTRACTOR shall not use SAFE's name or insignia, photographs, or any publicity pertaining to the Services in any magazine, trade paper, newspaper, television or radio production, or other similar medium without the prior written consent of SAFE.

**3.22 Indemnification.** CONTRACTOR shall indemnify and hold SAFE, COMMISSION, CHP, Caltrans and their directors, officials, officers, agents, contractors, consultants, employees, and volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of, or incident to, any acts, omissions, or willful misconduct of the CONTRACTOR, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Services or this Contract, including without limitation, the payment of all consequential damages and other related costs and expenses. CONTRACTOR shall defend, at CONTRACTOR's own cost, expense and risk, any and all such aforesaid suits, actions, or other legal proceedings of every kind that may be brought or instituted against SAFE, COMMISSION, CHP, Caltrans or their directors, officials, officers, agents, contractors, consultants, employees, and volunteers. CONTRACTOR shall pay and satisfy any judgment, award, or decree that may be rendered against SAFE, COMMISSION, CHP, Caltrans or their directors, officials, officers, agents, consultants, employees, and volunteers, in any such suit, action, or other legal proceeding. CONTRACTOR shall reimburse SAFE, COMMISSION, CHP, Caltrans and their directors, officials, officers, agents, consultants, employees, and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. CONTRACTOR's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the CONTRACTOR, SAFE, COMMISSION, CHP, Caltrans or their directors, officials, officers, agents, consultants, employees, and volunteers.

**3.23 Insurance.**



3.23.1 Time for Compliance. CONTRACTOR shall not commence work under this Agreement until it has provided evidence satisfactory to SAFE that it has secured all insurance required under this section, in a form and with insurance companies acceptable to SAFE. In addition, CONTRACTOR shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

3.23.2 Minimum Requirements. CONTRACTOR shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the CONTRACTOR, its agents, representatives, employees or subcontractors. CONTRACTOR shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or exact equivalent); (2) Automobile Liability: Insurance Services Office Business Auto Coverage (form CA 0001, code 1 (any auto) or exact equivalent); and (3) Workers' Compensation and Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. CONTRACTOR shall maintain limits no less than:

(i) General Liability:

Per occurrence:	\$2,000,000
Project Specific Aggregate:	\$4,000,000
Products/Completed Operations:	\$1,000,000
Personal Injury Limit:	\$1,000,000

(ii) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage; and

(iii) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Practices Liability limits of \$1,000,000 per accident.

3.23.3 On-Hook Insurance & Garage Keepers Liability Coverage.

(A) CONTRACTOR shall maintain a policy of On-Hook Towing Insurance to include the care, custody or control exposure present while vehicles are being serviced roadside, on-hook, or in a storage yard for not less than one hundred thousand dollars (\$100,000).

(B) CONTRACTOR shall maintain a policy of Garage Keepers Liability

Insurance which shall include coverage for vehicles in the care, custody and control of the CONTRACTOR with limits of liability not less than \$500,000 per occurrence for property damage.

3.23.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or CONTRACTOR shall provide endorsements on forms approved by SAFE to add the following provisions to the insurance policies:

(A) General Liability.

(i) Commercial General Liability Insurance must include coverage for (1) bodily Injury and property damage; (2) personal Injury/advertising Injury; (3) premises/operations liability; (4) products/completed operations liability; (5) aggregate limits that apply per Project; (6) explosion, collapse and underground (UCX) exclusion deleted; (7) contractual liability with respect to this Agreement; (8) broad form property damage; and (9) independent consultants coverage.

(ii) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to this Agreement.

(iii) The policy shall give SAFE, COMMISSION, CHP, Caltrans and their directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(iv) The additional insured coverage under the policy shall be "primary and non-contributory" and will not seek contribution from SAFE, COMMISSION, CHP, or Caltrans insurance or self-insurance and shall be at least as broad as CG 20 01 04 13, or endorsements providing the exact same coverage.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) SAFE, COMMISSION, CHP, Caltrans and their directors, officials, officers, employees and agents shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the CONTRACTOR or for which the CONTRACTOR is responsible; and (2) the insurance coverage shall be primary insurance as respects SAFE, COMMISSION, CHP, Caltrans and their directors, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the CONTRACTOR's scheduled underlying coverage. Any insurance or self-insurance maintained by SAFE, COMMISSION, CHP, Caltrans or their directors, officials, officers, employees and agents shall be excess of the CONTRACTOR's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage.

(i) CONTRACTOR certifies that he/she is aware of the provisions of Section 3700 of the California 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 he/she will comply with such provisions before commencing work under this Agreement.

(ii) The insurer shall agree to waive all rights of subrogation against SAFE, its directors, officials, officers, employees and agents for losses paid under the terms of the insurance policy which arise from work performed by the CONTRACTOR.

(D) All Coverages.

(i) Defense costs shall be payable in addition to the limits set forth hereunder.

(ii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to SAFE, its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

(iii) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of SAFE, COMMISSION, CHP, and Caltrans (if agreed to in a written contract or agreement) before SAFE, COMMISSION, CHP or Caltrans own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella/excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

(iv) CONTRACTOR shall provide SAFE at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the CONTRACTOR shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the CONTRACTOR shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to SAFE at least ten (10) days prior to the effective date of cancellation or expiration.

(v) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. CONTRACTOR shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. CONTRACTOR shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not

renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(vi) The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONTRACTOR, and any approval of said insurance by SAFE, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the CONTRACTOR pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(vii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, SAFE has the right but not the duty to obtain the insurance it deems necessary and any premium paid by SAFE will be promptly reimbursed by CONTRACTOR or SAFE will withhold amounts sufficient to pay premium from CONTRACTOR payments. In the alternative, SAFE may cancel this Agreement. SAFE may require the CONTRACTOR to provide complete copies of all insurance policies in effect for the duration of the Project.

(viii) Neither SAFE, COMMISSION, CHP, Caltrans nor any of their directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

Each insurance policy required by this Agreement shall be endorsed to state that:

**3.23.5 Deductibles and Self-Insurance Retentions.** Any deductibles or self-insured retentions must be declared to and approved by SAFE. If SAFE does not approve the deductibles or self-insured retentions as presented, CONTRACTOR shall guarantee that, at the option of SAFE, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SAFE, its directors, officials, officers, employees and agents; or, (2) the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

**3.23.6 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating no less than A: VIII, licensed to do business in California, and satisfactory to SAFE.

**3.23.7 Verification of Coverage.** CONTRACTOR shall furnish SAFE with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to SAFE. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by SAFE before work commences. SAFE reserves the right to require complete, certified copies of all required insurance policies, at any time.

**3.23.8 Subcontractor Insurance Requirements.** CONTRACTOR shall not allow any subcontractors to commence work on any subcontract until they have provided

evidence satisfactory to SAFE that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subcontractors shall be endorsed to name SAFE, COMMISSION, CHP and Caltrans as additional insureds using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by CONTRACTOR, SAFE may approve different scopes or minimum limits of insurance for particular subcontractors or subcontractors.

3.23.9 Review of Coverage. SAFE retains the right at any time to review the coverage, form and amount of insurance required herein and may require CONTRACTOR to obtain additional insurance reasonably sufficient in coverage, form, amount to provide adequate protection against the kind and extent of risk which exists at the time of change in insurance required.

3.23.10 Safety. CONTRACTOR shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the CONTRACTOR shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment, and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### 3.24 Prohibited Interests.

3.24.1 Solicitation. CONTRACTOR warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Contract. Further, CONTRACTOR warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for CONTRACTOR, any fee, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, SAFE shall have the right to rescind this Contract without liability.

3.24.2 Conflict of Interest. For the term of this Contract, no member, officer or employee of SAFE, during the term of his or her service with SAFE, shall have any direct interest in this Contract, or obtain any present or anticipated material benefit arising therefrom.

3.24.3 Conflict of Employment. Employment by the CONTRACTOR of personnel currently on the payroll of SAFE shall not be permitted in the performance of this Contract, even though such employment may occur outside of the employee's regular working hours or on weekends, holidays, or vacation time. Further, the employment by the CONTRACTOR of personnel who have been on SAFE payroll within one year prior to the date

of execution of this Contract, where this employment is caused by, and or dependent upon, the CONTRACTOR securing this or related Contracts with SAFE, is prohibited.

3.25 Nondiscrimination; Equal Opportunity Employment. CONTRACTOR shall not deny any benefits of this Contract 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 CONTRACTOR unlawfully discriminate, harass, or allow harassment against any subcontractor, 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.

Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination. Employment and Housing Act (Gov. Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Admin. Code, Tit. 2, Section 7285.0 et seq.): The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Sec 12900, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code, Sec 12900, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this Contract by reference and made a part hereof as if set forth in full. CONTRACTOR shall include the provisions of this Section in all of CONTRACTOR's subcontracts with respect to work under this Agreement, unless exempted by the Regulations. CONTRACTOR shall also comply with all relevant provisions of SAFE's Minority Business Enterprise program, Affirmative Action Plan, or other related SAFE programs or guidelines currently in effect or hereinafter enacted.

3.26 Right to Employ Other CONTRACTORS. SAFE reserves the right to employ other CONTRACTORS in connection with the Services.

3.27 Governing Law. The validity of this Contract and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by and construed with the laws of the State of California.

3.28 Venue. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in Riverside County, California. The Parties agree that the venue for any action or claim brought by any Party will be the Central District of Riverside County. Each Party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties agree to use their best efforts to obtain a change of venue to the Central District of Riverside County.

3.29 Time of Essence. Time is of the essence for each and every provision of this Contract.

3.30 Headings. Article and section headings, paragraph captions, or marginal headings contained in this Contract are for convenience only and shall have no effect in the construction or interpretation of any provision herein.

3.31 Notices. All notices hereunder and communications regarding interpretation of the terms of this Contract or changes thereto shall be given to the respective Parties at the following addresses, or at such other addresses as the respective Parties may provide in writing for this purpose:

**CONTRACTOR:**  
**Royal Coaches Auto**  
**Body and Towing**  
**14827 Ramona Blvd**  
**Baldwin Park, CA 91706**  
**Attn: William Salazar**

**SAFE:**  
**Riverside County Service Authority**  
**for Freeway Emergencies**  
**FSP Program**  
**P.O. Box 12008**  
**Riverside, CA**  
**92502-2208**  
**Attn: Brian Cunanan**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. mail, first class postage prepaid, and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.32 Electronic Delivery of Agreement. A manually signed copy of this Agreement which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of the Agreement for all purposes.

3.33 Amendment or Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.34 Entire Contract. This Agreement contains the entire Agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, contracts or understandings.

3.35 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.36 No Waiver. Failure of CONTRACTOR to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

3.37 Eight-Hour Law. Pursuant to the provisions of the California Labor Code, eight hours of labor shall constitute a legal day's work, and the time of service of any worker employed on the work shall be limited and restricted to eight hours during any one calendar day, and forty hours in any one calendar week, except when payment for overtime is made at not less than one and one-half the basic rate for all hours worked in excess of eight hours per day ("Eight-Hour Law"), unless CONTRACTOR or the Services are not subject to the Eight-Hour Law. CONTRACTOR shall forfeit to SAFE as a penalty, \$50.00 for each worker employed in the execution of this Agreement by him, or by any sub-consultant under him, for each calendar day during which such workman is required or permitted to work more than eight hours in any calendar day and forty hours in any one calendar week without such compensation for overtime violation of the provisions of the California Labor Code, unless CONTRACTOR or the Services are not subject to the Eight-Hour Law.

3.38 Subpoenas or Court Orders. Should CONTRACTOR receive a subpoena or court order related to this Agreement, the Services or the Project, CONTRACTOR shall immediately provide written notice of the subpoena or court order to the SAFE. CONTRACTOR shall not respond to any such subpoena or court order until notice to the SAFE is provided as required herein and shall cooperate with the SAFE in responding to the subpoena or court order.

3.39 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, and the obligations related to receipt of subpoenas or court orders, shall survive any such expiration or termination.

3.40 Counterparts. This Agreement may be signed in one or more counterparts, any one of which shall be effective as an original document.

3.41 Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this Agreement as though fully set forth herein.

3.42 Conflicting Provisions. In the event that provisions of any attached exhibits conflict in any way with the provisions set forth in this Agreement, the language, terms and conditions contained in this Agreement shall control the actions and obligations of the Parties and the interpretation of the Parties' understanding concerning the performance of the Services. In the event the standards set forth in this Agreement conflict with the standards set forth in any exhibit hereto, the higher standard shall govern.

3.43 Attorneys' Fees and Costs. If any legal action is instituted to enforce or declare any Party's rights hereunder, each Party, including the prevailing Party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a Party hereto and payable under Section 3.21, Indemnification.

3.44 Consent. Whenever consent or approval of any Party is required under this Contract, that Party shall not unreasonably withhold nor delay such consent or approval.



3.45 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

**[Signatures on following page]**

DRAFT

**SIGNATURE PAGE  
TO AGREEMENT 22-45-102-00**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first herein written above.

RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION  
ACTING AS THE  
RIVERSIDE COUNTY SERVICE  
AUTHORITY FOR FREEWAY  
EMERGENCIES

ROYAL COACHES AUTO BODY AND  
AND TOWING

By: \_\_\_\_\_  
RCTC Chair

By: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

APPROVED AS TO FORM:

Attest:

By: \_\_\_\_\_  
Best Best & Krieger LLP,  
Counsel to the Riverside County  
Service Authority for  
Freeway Emergencies

By: \_\_\_\_\_  
Its: Secretary

## EXHIBIT "A"

### Scope of Services Express Lanes

#### 1.0 GENERAL INFORMATION

##### 1.1 Background & Introduction

In 1993, the California state legislature adopted the Freeway Service Patrol (FSP) Act. This act allows for the implementation of a freeway service patrol system on highways throughout California. The FSP program in Riverside County is operated in partnership with Riverside Express Lanes and the California Highway Patrol (CHP). The purpose of the Toll FSP program is to provide tow services within a designated toll facility to ensure the lanes operate in a free-flow state and facilitate the rapid removal of disabled vehicles. Contracts to provide toll FSP service are competitively bid.

##### 1.2 Project Description

The purpose of the Toll FSP program is to provide trucks that are strategically staged within the corridor to deploy and provide for the rapid removal of disabled vehicles from the toll lanes and perform minor services. Toll FSP operates on selected toll lane segments referred to as "beats". Each beat has specific turnaround locations and designated drop locations identified by CHP. The Scope of Services (Section 2.0) hereunder identifies the specific limits, number and type of tow trucks, number and type of back-up trucks, hours of operation, and tentative holidays on which the cost of each beat shall be based. RCTC reserves the right to add or delete holidays and to modify the work schedule to optimize service hours. Travel time to and from the beat will be at the expense of the Contractor.

The Scope of Services of this contract will include two beats, 91-T Beat for the 91 Express Lanes and 15-T Beat for the Interstate (I)-15 Express Lanes. The limits of the 91 Express Lanes include are on State Route (SR) 91 from the Orange County/Riverside County line to McKinley Street and connector(s) to the I-15 Express Lanes to Ontario Avenue or Sixth Street. The I-15 Express Lanes will be along the I-15 from the San Bernadino County/Riverside County line to Cajalco Road and direct connectors to the 91 Express Lanes. The trucks may will be able to work across the both beats to maximize contractor efficiencies.

Where traffic conditions permit, safe removal of small debris will be required. Vehicle operators will perform a sweep of the entire length of the beat at the start of shift, end of shift, and every two hours in between, or less frequently as determined by RCTC. Due to Toll FSP trucks being staged rather than roving, vehicle operators shall mobilize within three (3) minutes of receiving notification from the Traffic Operations Center (TOC) or CHP or the Contractor shall be fined five (5) times the hourly contract rate in one (1)

minute increments for the amount of time it takes the vehicle operator to mobilize. Mobilize is defined as a FSP certified truck being en route to a call for service.

Vehicle operators shall be responsible for clearing the toll lanes of automobiles, small trucks, motorcycles, and small debris. When and where conditions warrant, service may be executed on toll lane shoulders. Where conditions do not warrant, vehicle operators will remove the vehicles from the toll lanes and off the highway to provide service. During service hours, Toll FSP vehicles shall always be prepared to respond to CHP calls for service, respond to calls for service from toll operations, use the CHP designated drop locations for vehicles, and use the designated turnaround locations.

Toll FSP vehicle operators may be required to perform minor services, such as: change flat tires, provide "jump" starts, provide one gallon of gasoline or diesel fuel, temporarily tape cooling system hoses, refill radiators, and tow vehicles in a safe and efficient manner.

If a disabled vehicle cannot be mobilized or relocated, the motorist can request the Toll FSP vehicle operator to call the CHP Communications Center to request a CHP rotational tow or other service. Toll FSP vehicle operators shall not be allowed to tow as an independent contractor from an incident or assist that occurred during the Toll FSP shift unless called as a rotation tow by CHP after the shift has ended. If called as a rotation tow after a Toll FSP shift, the vehicle operator must first remove all Toll FSP markings such as signs, vests, and uniforms.

There may be some instances where Toll FSP operators may be requested to provide assistance to CHP Officers. Toll FSP operators shall follow the instructions of the CHP Officer at the scene of any incident within the scope of the Toll FSP program.

All Toll FSP services shall be provided at no cost to the motorist. Toll FSP vehicle operators shall not accept gratuities, perform secondary towing services, recommend secondary tows, or recommend repair/body shop businesses.

Toll Freeway Service Patrol standard hours of operation are defined in section 2.1 below. It will be determined at time of award whether contractor vehicles shall be exclusively dedicated to Toll FSP service or not. All vehicle maintenance activities shall be conducted during non-service hours.

To be awarded a contract, a Contractor must have a tow facility within close proximity to the service area, have been in business as a tow service operator for a minimum of five (5) years, and have a minimum of two (2) years experience in CHP tow rotation service and currently be a CHP tow rotation provider.

A Contractor that has been terminated for cause from any FSP contract within the state shall not be eligible to participate in the Riverside County FSP program. A NEW Contractor, who remains in good standing, as determined by FSP management, may be considered for additional beat awards in future procurements.

An existing Contractor that is not in good standing as determined by information received by the FSP management staff at the time of their proposal may, at the discretion of FSP management, be limited to the number of beats the Contractor is awarded, including not being awarded any beats.

**FSP Management Staff reserves the right to limit the number of beats awarded to one Contractor.**

At any time during the contract's term, RCTC reserves the right to adjust beat specifications and service hours to better accommodate demand for the service. These changes can occur during the course of the contract through formal amendments. If warranted during the service hours, the Contractor may be requested to temporarily reassign his/her Toll FSP operators/trucks to locations outside its assigned Beat. Contractors may be permitted to do this only upon CHP and/or RCTC approval.

If awarded a contract, the Contractor shall have no more than two hundred sixteen (216) calendar days after the notice to proceed (notice of proceed tentatively expected on or around June 8, 2022), in which to acquire the required equipment, hire and train vehicle operators, be operable, and be FSP certified. The Contractor shall have the appropriate number of primary and back-up trucks ready for inspection by CHP no later than January 10, 2023. Any company that cannot meet the above-mentioned requirements shall not be awarded the contract(s).

## 2.0 **Beat Description/Summary**

FSP Beat #	Beat Description	One-Way Length in Miles	# Primary FSP Trucks	# Backup FSP Trucks
91-T	Express Lanes on SR-91 from Orange County line to McKinley Street, I-15 Connectors to Ontario Avenue or Sixth Street	13.1	1	1
15-T	Express Lanes on Interstate I-15 from San Bernadino County line to Cajalco Road, Connectors to 91 Express Lanes	15	2	

### 2.1 **Hours of Operation:**

#### Standard Toll FSP 91-T

Monday through Wednesday

4:00 a.m. to 10:30 a.m. operating 1 truck

1:00 p.m. to 7:00 p.m. operating 1 truck

Thursday through Friday

5:00 a.m. to 10:30 a.m. operating 1 truck

12:00 p.m. to 8:00 p.m. operating 1 truck

Saturday through Sunday

1:00 p.m. to 7:00 p.m. operating 1 truck

Standard Toll FSP 15-T

Monday through Wednesday

5:00 a.m. to 10:30 a.m. operating 2 truck

1:00 p.m. to 7:00 p.m. operating 2 truck

Thursday through Friday

5:00 a.m. to 10:30 a.m. operating 2 truck

12:00 p.m. to 8:00 p.m. operating 2 truck

Saturday through Sunday

1:00 p.m. to 7:00 p.m. operating 1 truck

During standard Toll FSP service hours, the backup truck is required to be available at all times. **RCTC reserves the right to change service hours and operational requirements during the course of the contract.**

- a. Total estimated truck hours in per year of contract: 10,998.
- b. Trucks may rotate between beats to maximize operational efficiencies.
- c. In addition to the above service hours, at the discretion of RCTC and CHP, additional service may be requested as deemed necessary. Contractor will be notified at least one week prior to when this service is to be provided.
- d. Toll FSP service will operate on all major holidays unless otherwise notified.

### **3.0 FSP Management and Representatives**

RCTC is providing freeway service patrol along the SR-91 and I-15 Express Lanes for traffic mitigation, as well as air quality improvement within Riverside County. RCTC and CHP will jointly oversee the service. RCTC serves as the contract administrator and funding agency while CHP is responsible for the daily operations and field supervision of the program.

Authority for FSP derives from (a) Section 21718 (A) of the California Vehicle Code, which allows FSP trucks supervised by the CHP to stop on freeways for the purpose of rapid removal of impediments to traffic.

### 3.1 Standard Operating Procedures

The guidelines and policies of the FSP program, which promote a safe work environment and maintain a level of professionalism, are contained in the Standard Operating Procedures (SOP) manual developed by the CHP. The SOP and any updates to it are incorporated into the contract with RCTC, therefore, the Contractor and their vehicle operators are responsible to operate and adhere to the most recent version of the SOP at all times.

Contractor shall be held responsible for maintaining an updated SOP, which is incorporated herein by reference. SOP revisions and updates shall be unilaterally issued by RCTC or CHP, as deemed necessary by CHP or the FSP Technical Advisory Committee, and all changes, revisions and updates to the SOP, if any, shall supersede all previous or existing SOPs. A copy of the current SOP is included as part of the original RFP package and additional hard or soft copies can be provided to all interested parties upon request. Contractor is shall sweep the beat at the beginning and end of each shift and once every one (1) hours during the shift.

**Contractor shall mobilize, be in-route to the incident, immediately. RCTC reserves the right to penalize the contractor five (5) times the hourly contract rate in one (1) minute increments for every minute that exceeds the grace period of three (3) minutes, plus the loss of revenue for the down time beyond.**

**Vehicle operators or Toll FSP trucks found not to be in compliance with FSP procedures defined in the SOP may be penalized, suspended, and/or terminated from the FSP program and the company may also be assessed liquidated damages amounts for said violations as described herein. Liquidated damages are inclusive of other remedies at law and/or those described under the terms of the contract.**

Refer to Proposal Pricing Form for further details on violations and penalties.

## 4.0 Vehicles

### 4.1 Tow Truck Requirements

Toll FSP tow trucks shall be exclusively dedicated to the Toll FSP program during Toll FSP service hours. All vehicle maintenance activities shall be conducted during non-Service hours. When conducting the Services on a Toll FSP shift, the CONTRACTOR's vehicle shall display all Toll FSP markings and the vehicle operator shall wear a Toll FSP uniform.

The Toll FSP will use conventional two-vehicle car carrier/flatbed Class A tow trucks with seating capacity for five. The tow trucks will have a minimum gross vehicle weight rating of 21,000 pounds and a rear gross adjusted weight rating of 15,000 pounds. All trucks

proposed for use in the Toll FSP Program should be less than a year old with a maximum of 50,000 miles on the chassis and working parts of the truck at the onset of the contract, free of any mechanical defects or physical damage and have a clear (non salvage) title. Extenuating circumstances dictating departure from this specification should be at the consensus of the local FSP partners. The CHP, in conjunction with the Caltrans or the regional transportation agency, should verify the original purchase dates to ensure compliance.

All Toll FSP tow trucks must be Department of Transportation (DOT) compliant, as well as California Air Resources Board (CARB) compliant. This includes an engine that has been certified by CARB, as required by law in the State of California. Any tow truck that is utilized for the Toll FSP Program must comply with emission standards set forth by DOT and CARB, as well as all local, state, and federal laws associated with that truck and as outlined in the RFP.

Each tow truck shall be equipped in accordance with the CHP's Freeway Service Patrol Manual and Standard Operating Procedures Manual and, at a minimum, shall include the following:

Toll FSP Equipment List		
	Current Registration/ Insurance	Fire Extinguisher: 4BC Rating, new or exp:
	Paint: White Only, 4" max black lettering	Broom: 24 inches wide, coarse bristle
	Rubber faced push bumper(s)	Shovel: Square point
	Vehicle numbers on both sides	Large Pry Bar: Minimum 36 inch length
	2 FSP signs	Wood Crossbeams: 1 ea., 4"x4"x48" and 4"x4"x60"
	Headlights	Hydraulic Floor Jack: 2-Ton capacity
	Turn Signals	Jack stand: 2-Ton capacity
	Reflectors, Front and Side	Portable air tank: 80 psi. min, or compressor w/ 50' min hose
	Clearance Lamps (>80" Wide)	Bolt Cutters
	Amber Warning Lights: Front/rear selectable, in-cab controls	One 4 - Ton snatch block



License Plate Lamp	Flares: Total burn time of 360 minutes minimum
Tail Lamps	Metric and Standard 4-way Lug Wrenches
Stop Lamps	Sledge Hammer: 4 pound
Backup Lamps	Utility/ Motorcycle Straps
Rear work lights	Steering Wheel Securement Device
Reflectors, Rear	Funnel with flexible spout
Extension Tail/ Stop Lamps	Water Container: Plastic, 5 gallon
Fenders / Mudguards	Fuel in Approved Plastic Containers: Gas/Diesel, 5 gal. each
Windshield	Absorbent Can with lid: 5 gal. of clean absorbent
Windshield Wipers	Trash Can with lid: 5 gal., empty
Spotlight: Body mounted, front to rear coverage	Cones: 6 ea., 18 inch height, reflectorized w/ tape
Service Brakes	Booster cables: 3 ga. Cu., 25 ft., H-D clamps, fit truck
Parking Brake	Booster Cable Connectors: mounted front and rear
Mirrors	Battery Rating: 60 Amp-hour or greater
Horn	Tire Tread
Beam Indicator	Wheels
Cab interior lighting suitable for reading and writing	Suspension
Truck to Shop Communications System	Steering
FSP Two-Way Radios / Terminals	Frame
Scanner: Operating and properly programmed	Exhaust System
Public Address System	Fuel Cap(s)
Flashlight	
Spare flashlight batteries/ Charger for rechargeable	
First Aid kit: 5"x9"	<b>Tool Kit</b>
Lockout Tool Set	Screwdrivers: 1/8", 3/16", 1/4", 5/16" Flat; #1, #2 Philips
Warning Devices (Reflectors)	Adjustable Wrenches: 8" and 12"
	Pliers: Needle nose and adjustable rib joint, 2 inch capacity
	Duct tape, Electrical tape, mechanics wire: 1 roll each
	Rubber Mallet
	Tire Pressure Gauge

**WRECKER - GENERAL**

	Manufacturer Rating Plates	Throttle Control
	Wrecker Controls on both sides of vehicle	Hydraulic Rams, Hoses, Valves
	Control Labels	Winch: Type:
	Body and Towing Equipment Mounting Bolts	Winch: Rated 8,000 pounds on first cable layer
	Cable Sheaves	Safety chain D-ring or eyelet mounted on rear of truck

**WHEEL LIFT**

	Minimum GVWR: 14,000 lbs.	"L" Arms
	Wheel Lift Assembly; Rated 4,000 Pounds-Extended, with Wheel Lift Extended	Cradle / Straps/ Chains
	Pivot Pin	Claw
	(2) Wheel Tie Down Safety Straps with ratchets	100' 3/8" 6x19 Wire rope or OEM Specifications
	4-Ton Boom Assembly	(2) Tow Chains 5/16" Grade 70 with J/T Hooks
	Sling Assembly; Rating: 3,000 Pounds (if equipped)	Tow Dolly (with wheel tie down straps), minimum rating of 3,900 pounds. Steel Pry Bar (1)
	One pair of spacer blocks or 2 wood blocks 4"x6"x12"	(2) Safety Chains: 5/16" Alloy or OEM Specifications 5 foot min. length

**CAR CARRIER / TWO VEHICLE**

	Minimum seating capacity for 5 adults	50' 3/8" 6X19 Wire rope or OEM Specifications
	GVWR: Minimum. 21,000 lbs.; Rear GAWR 15,000 min.	J/T Hook Loading Bridle Chains
	Carrier Bed Frame	4 Safety Chains 5/16" Alloy or OEM Specifications
	Bed Material: Steel or Aluminum	Wheel Lift Assembly; Rated 4,000 Pounds-Extended, with Wheel Lift Extended.
	Bed Length: 19.5 ft. minimum	(2) Wheel Tie Down Safety Straps with ratchets
	Bed Hinges	One pair of spacer blocks or 2 wood blocks 4"x6"x12"
	Bed Safety Lock	Motorcycle loader for flatbeds

	Tie Downs: 8 each, one near each corner of the bed, two each side of bed distributed between corner tie downs, each must accommodate snatch blocks	(2) Safety Chains: 5/16" Alloy or OEM Specifications 5 foot min. length

## 4.2 Tow Truck Appearance

Toll FSP vehicles bearing the Toll FSP title, logo, and vehicle identification number shall be painted white (includes the hood, fenders and doors – the entire truck cab is to be painted white). No trim will be allowed. Lettering shall be in a blocked bold style parallel to the ground and shall be no less than 2 inches by 2 inches and no greater than 4 inches in height. Lettering can only be black in color (no other colors will be permitted). Letters shall be placed on the lower body of the truck toward the cab. The overall look of the truck must be approved by CHP prior to service implementation; therefore, any questions regarding this policy may be discussed with CHP prior to implementing, as truck compliance with current state FSP standards is required. No other accessory equipment, signage, or advertisements (mud flaps, stickers, employment advertisement, and so forth) shall be mounted or installed without prior CHP approval. This includes, but is not limited to: bras or window tint.

RCTC will provide either removable magnetic signs or permanent decals with the Toll FSP logo for the Toll FSP vehicles. The type of sign or decal to be used will be determined based on whether or not the Toll FSP vehicles are fully dedicated during non-Toll FSP hours. If removable magnetic signs are chosen, these signs shall be removed immediately upon completion of each shift. RCTC will supply each Contractor with the appropriate number of detachable markings for each Beat(s). If a marking is lost or damaged, the Contractor shall be responsible for the cost of the replacement markings. All Toll FSP markings shall be returned at the termination of the contract. The cost of any RCTC and/or Caltrans/CHP supplied item and/or equipment not returned shall be deducted from the Contractor's final payment.

Toll FSP markings, as well as vehicle numbers, shall be required on both sides of all trucks. The removable magnetic signs, if used, are to be provided by RCTC and must be placed on the center of the driver and passenger doors of the vehicle. The vehicle operator shall be required to keep the title and logos clean, straight, and in readable condition throughout the Toll FSP shift. The operator is also required to keep the magnetic signage flat (do not bend in any way), clean, and out of direct sunlight while being stored during non-Toll FSP operational hours.

## 4.3 Vehicle Inspections

Prior to commencement of service, the CHP will inspect each vehicle designated for the FSP to ensure that it meets the vehicle specifications and to ensure that it meets or

exceeds safety requirements. These inspections will occur prior to the start of service. Succeeding inspections will occur periodically as determined by the CHP. Documentation of the vehicle identification number and successful completion of the inspection will be kept on file at the CHP office and Contractor's base office.

Any unsafe, poorly maintained, or improperly equipped vehicle(s) shall be removed from service, and if discovered to be in such a condition during the shift, said vehicle(s) shall be removed from service or repaired as directed by the CHP, and **the Contractor shall be fined five (5) times the hourly contract rate in one (1) minute increments for the remainder of that shift, plus the loss of revenue for the down time.** Spare vehicles, also known as "back-ups", will be required to complete the shifts of vehicles removed from service. The Contractor will be required to have a back-up Toll FSP vehicle available for service for the duration of each and every Toll FSP shift with the exception of the afternoon shift during ramp-up service hours as the back-up truck will be used as the second primary truck.

The vehicle operator shall be required to complete a pre-operation shift inspection log of the vehicle as well as inventory the required equipment prior to the start of each and every shift. The vehicle operator shall be required to complete a driver log, which is used to track the mileage. A shift inspection/inventory log shall be completed by the vehicle operator prior to the start of each shift and be available for inspection. Any item missing must be replaced prior to the start of the shift. All equipment stored on top of the truck shall be secured to the truck.

#### **4.4 Spare/Back-Up Vehicles**

The Contractor shall be required to have one FSP Certified Back-Up tow truck available per Beat during Toll FSP service hours that is in full compliance with the agreement, unless otherwise authorized by RCTC and CHP in writing. The only exception to this is for afternoon shifts during ramp-up service hours as the back-up truck will be used as the second primary truck. During Toll FSP service hours, the spare vehicle shall be kept at the Contractor's yard or staged adjacent to the assigned beat. The FSP Certified Back-Up tow truck should be used when the Certified Primary Toll FSP tow truck is unavailable. The Toll FSP Certified Back-Up tow truck shall meet the same requirements for equipment, set-up, and color as the Certified Primary Toll FSP tow truck. It shall meet all the vehicle equipment specifications. Refer to Attachment H for further details on violations and penalties.

#### **4.5 Vehicle Breakdown and Other Missed Service**

The spare vehicle must be in service on the Beat within 30 minutes of the time a permanently dedicated vehicle is taken out of service for any reason. The Contractor shall not be paid for the time period that the contractually required trucks are not in service. **If a vehicle is not made available within the required 30 minute time period, the Contractor shall be fined five (5) times the hourly contract rate in one (1) minute increments for every minute that exceed the 30 minute replacement period**

until a certified FSP compliant spare/back-up vehicle is provided. If a truck is not ready due to breakdown at the start of a shift, the fine time will be calculated from the start of the shift until a replacement is placed into service. If the entire shift is missed, Contractor shall be fined for the entire shift at five (5) times the hourly rate times the total minutes for the affected shift.

Vehicle maintenance shall be performed during non-FSP service hours. In addition, not having a certified FSP “spare or back-up” vehicle operator available is not an allowable excuse for not having a spare (back-up) vehicle on the beat within the 30 minute time period. If the Contractor does not have a dedicated or spare truck on the Beat because a certified FSP vehicle operator is not available, the Contractor shall be fined five (5) times the hourly contract rate in one (1) minute increments until a certified FSP replacement vehicle operator is provided. If the entire shift is missed because a vehicle operator was not available, the Contractor shall be fined for the entire shift at five (5) times the hourly rate times the total minutes for the affected shift.

## **5.0 Communications Equipment and Computers**

### **5.1 Communications Equipment**

Each FSP vehicle shall be equipped with various communication devices that will enable the vehicle operator to communicate with the TOC and CHP Communications Center. All vehicles shall be equipped with an Automatic Vehicle Location (AVL) system, radios, and Data Collection Devices (DCD). The AVL system, radio, and DCD equipment shall be purchased, owned, and supplied by RCTC. RCTC shall select the equipment and equipment installation vendor.

The Contractor shall be responsible for maintaining the security of the vehicle communication equipment provided by RCTC. The Contractor shall be liable for any damage to the RCTC-owned communication equipment. The Contractor shall also be liable for the full replacement value of the communication equipment installed in the trucks while in the care, custody, and control of the equipment. RCTC will deduct repair fees as well as the full replacement cost of any RCTC equipment due to improper use or negligence by the Contractor from any payment due to the Contractor. RCTC-supplied vehicle communications equipment shall be returned in full working condition upon contract termination. The cost of any equipment not returned within a reasonable time period shall be deducted from the Contractor's final payment.

Programmable scanners capable of scanning between the 39 and 48 MHz used by CHP shall be supplied by the Contractor and shall be installed (mounted) in all vehicles.

The Contractor is also required to use Verizon wireless cell phones with push to talk plus capability, or equivalent, for communications with the TOC, CHP Communications Center, and the CHP Field Supervisor. Wireless cell phones shall be purchased and maintained by the Contractor. The Contractor will also be responsible for all operating

costs. In addition, tow operators are not permitted to take pictures, video, or capture any other images while performing FSP duties during FSP operational hours. These actions will not be tolerated and a vehicle operator may be terminated if it is discovered they are doing so.

In addition, any input of data into the DCD shall not be allowed while the vehicle is being operated/driven. Use of other devices while driving/operating a vehicle such as cell phones is prohibited by California State Law.

The FSP vehicles shall be equipped with a public address system. The public address system shall have the capability for the driver of the disabled vehicle to hear instructions transmitted from the cab of the FSP vehicle when the FSP vehicle is directly to the rear of the disabled vehicle.

## 5.2 Computer Equipment

The Contractor shall purchase and maintain a desktop computer workstation with high speed internet access and email to communicate with RCTC staff.

The Contractor must ensure that the DCD equipment is inspected and cleaned on a quarterly basis, or more frequently if needed. All DCD equipment should have the exterior protective case cleaned (protective outside case) and the stylus and screen protector shall be inspected for functionality and serviceability. Worn items shall be immediately reported to RCTC.

All DCD equipment must be kept in a secure location. **During non-Toll FSP operational hours, DCD equipment shall not be left in a tow vehicle or go home with a vehicle operator or anyone else.** All DCD equipment must be in a designated charging area at the tow operator's facility during non-FSP operational hours. The DCD equipment shall always have enough charge to complete each shift. In order to reduce instances of technology glitches, the DCD equipment shall be turned off/turned on at least once per week. DCD equipment is to be with the vehicle operators in their Toll FSP trucks during Toll FSP operational hours. Any other location shall not be permitted.

The Contractor shall immediately report any issues with the work station or the DCD equipment to the RCTC FSP Program Manager or one of the FSP CHP Officers. Contractor is directly responsible to ensure their computer work station is operating and **has internet access at all times – this is a contract requirement.**

The Contractor shall provide access to the DCD equipment for RCTC staff, or their designated designee, at **any time** during the course of the Contract. **In addition, the Contractor shall also make the workstation available to RCTC, or its designee, 30 calendar days prior to the start of the new service.**

The Contractor shall provide a quarterly inspection report to RCTC indicating the status of all equipment. RCTC will provide the submittal form. Tow operators should consider

the accurate completion and timely return of this form as part of their contract requirements.

### **5.3 Equipment Tampering**

Tampering with FSP communication/tracking equipment so that it does not function properly to RCTC's specifications, and/or is disconnected or moved (without FSP Management authorization) from its original installed location is strictly prohibited. This includes but is not limited to: breaking evidence tape/connection sealer on equipment connections, cutting wires or cable, moving mounted equipment (speakers, microphones, antennas, etc.), rerouting any wiring, disconnecting any connectors, Contractor/subcontractor unintentionally altering equipment or connections to equipment during vehicle maintenance or repair, or interfering with the operations of the equipment.

If tampering is suspected, FSP Management may conduct an inspection of the equipment on the Beat or the vehicle may be sent to a designated location determined by FSP Management.

1. If tampering is found while the vehicle is used during FSP operational hours, the vehicle operator and vehicle will be immediately taken out of service and the Contractor shall be fined in one (1) minute increments at five (5) times their hourly rate, until such time that the back-up truck is deployed. Please note that if tampering is discovered, the penalties (five times the hourly rate in one minute increments) shall begin immediately upon the discovery of the tampering. The normal 30 minute back-up truck time allowance will not be considered "non-penalty" time under these circumstances. The penalties shall begin immediately upon the tampering being discovered.
2. If the vehicle is suspected to have equipment that has been tampered with, it may be sent to a designated location determined by FSP Management and CHP for an inspection. If tampering is found, the Contractor may be retroactively fined five (5) times the hourly rate in one (1) minute increments from the time the tampering was first suspected. The penalties will continue until a certified FSP back-up truck is deployed. The normal 30 minute back-up truck time allowance will not be considered "non-penalty" under these circumstances.

#### Tampering Repairs

If tampering is discovered during FSP operational hours, the vehicle will be taken out of service and will remain out of service until the repair and the documentation can be completed by the FSP Program designated technician. FSP Management determines the designated technician. The transportation, labor, and repair costs will be the responsibility of the Contractor. Costs incurred to repair and document the equipment will be deducted from the tow operators monthly invoice.

#### Tampering Penalties

The Contractor will also be assessed a \$250 fine (whether the tampering is discovered while on the Beat, or if it was suspected and later confirmed) per incidence on their monthly invoice. If it is determined that the vehicle operator tampered with the equipment, the vehicle operator will be suspended for a minimum of 30 days for the initial tampering offense and subject to termination from the FSP Program for any subsequent tampering violations.

## **6.0 Contractor Responsibilities**

### **6.1 Appearance at Hearings**

If and when required by SAFE, Contractor shall render assistance at public hearings or other meetings related to the performance of the Services.

### **6.2 Damage Complaints**

Upon receiving a damage complaint from a motorist assisted by the Contractor, that the Contractor damaged their vehicle while lending assistance, the Contractor shall notify CHP immediately regarding the nature of the damage complaint and its disposition. The Contractor shall reply to the motorist by telephone within twenty-four (24) hours of receiving the damage complaint notification from CHP. If necessary, the Contractor shall send either his or her authorized representative or his or her insurance company representative to inspect the vehicle and complete an incident report within forty-eight (48) hours after receiving the damage complaint. If the investigation shows that damage to the vehicle could have been caused by the Contractor, the Contractor shall negotiate in good faith to try and resolve the issue and shall report to the CHP the result of the negotiations. All complaints shall be resolved within a reasonable period of time after being received.

### **6.3 Complaint Review Committee**

The FSP Technical Advisory Committee ("FSP TAC") is composed of voting members from CHP, SAFE, and Caltrans. Voting members of the FSP TAC are hereby designated as the members of the Damage Complaint Review Committee ("DCRC"). If the DCRC finds that justifiable complaints are not resolved within a reasonable time frame, it can recommend that payment to the Contractor in the amount of the damage claim may be deducted from the Contractor's monthly invoice.

### **6.4 Trend Meetings**

Contractor shall attend, or send a designated management-level representative, to all trend meetings (i.e. required FSP TAC meeting which meets every other month). These trend meetings will encompass focused and informal discussions concerning, but not limited to: scope, Services, schedule, current progress of Services, relevant cost issues, and future objectives. Contractor shall be responsible for having a representative attend all meetings (i.e. FSP TAC meetings) that has the ability to make management-level decisions on the behalf of the Contractor. If the Contractor cannot have a management-



level representative at a meeting, Contractor shall notify SAFE and CHP prior to the meeting. Management-level attendance at these meetings shall be considered part of the Contractor's contractual responsibility. Meetings are scheduled, and Contractor will be notified of such schedule, no later than three (3) working days prior to the meeting.

## **6.5 Monthly Progress Reports**

As part of its Invoice, Contractor shall submit a Monthly Progress Report, in a form determined by SAFE, which will cover the Invoice period and include spreadsheets showing hours expended for each day of the month per vehicle per beat, and the total for the term of the Contract. Submission of such Monthly Progress Report by Contractor shall be a condition precedent to receipt of payment from SAFE for each monthly Invoice submitted.

## **7.0 Vehicle Operators**

### **7.1 Operator Qualifications and Performance**

All potential vehicle operators shall be required to have a safe driving record and, at a minimum, a valid Class C driver's license. All vehicle operators shall be 18 years of age or older at the time of background check. Potential vehicle operators shall be subject to driving record and criminal background checks through the California Highway Patrol. Potential vehicle operators shall be sufficiently experienced in the tasks of tow truck operations and proficient with all required Toll FSP equipment to provide safe and proper service. Any certified vehicle operator from other FSP areas will be evaluated on a case-by-case basis. All potential vehicle operators must be capable of demonstrating their tow operating abilities prior to formal CHP training, also known as proficiency testing. Additionally, the vehicle operators will be required to exercise good, sound judgment in carrying out their duties.

Toll FSP vehicle operators will be responsible for accurately entering the required data into DCD equipment every shift. Each Toll FSP vehicle operator shall complete an inspection worksheet prior to the commencement of driving the tow truck and a mileage log prior to beginning service on the Beat. The Toll FSP vehicle operator shall be required to complete an assist record for each incident. Each assist record should be accurate. Contractors or vehicle operators providing false or misleading information to FSP Management shall be subject to disciplinary action and will be handled on a case-by-case basis.

FSP vehicle operators shall always complete the required procedures per the SOP when handling required forms. No duplicate survey numbers should be entered into the DCD equipment at any time. Vehicle operators are required to complete in their entirety the Release of Liability form and Damage Release form when applicable. These completed forms should be handed in to RCTC, at a minimum, every 60 days. If it is discovered that a vehicle operator has entered duplicate survey numbers, not fully completed assist

records, not properly completed the release forms, or not turned the release forms in timely, the Contractor may be subject to penalties as outlined in Proposal Pricing Form.

CHP, Caltrans, and RCTC maintain strict drug and alcohol policies. Contractors shall have an alcohol and drug program that includes at a minimum, a drug and alcohol free workplace policy and an employee alcohol/drug-testing program. Any FSP vehicle operator found working under the influence of drugs or alcohol shall be immediately removed from the FSP program by the Contractor. The Contractor shall be responsible for providing a certified replacement vehicle operator for that vehicle.

The Contractor shall be an active participant in the **DMV Pull Notice Program**.

If a vehicle operator is convicted of a crime involving a stolen vehicle, stolen property, violence, drugs, or moral turpitude, fraud related to the towing business, or misdemeanor or felony driving while under the influence of alcohol or a drug, the Contractor shall permanently remove that vehicle operator from duties under the FSP program. If a vehicle operator is charged with any of the above crimes, the Contractor shall immediately suspend that vehicle operator from duties under this program pending the outcome of the criminal case. If the vehicle operator is not convicted, or is ultimately convicted of a lesser crime not described above, RCTC retains the right to have the Contractor remove that vehicle operator from the duties under the FSP program.

## **7.2 Operator Training**

At the Contractor's expense, all company owners, Toll FSP vehicle operators, and back-up vehicle operators shall be required to present a certificate of completion of a SHRP 2/TIMS training course and to complete the CHP two-day training program which costs approximately \$50.00 per vehicle operator (fee is for the DL64 Tow Truck Driver Certificate and fingerprinting). Contractors shall pay all FSP operators and back-up vehicle operators for attending the training. No vehicle operator will be allowed to begin patrolling without meeting the requirements set forth in the SOP. Any vehicle operator who is found on patrol meeting the requirements may be prohibited from further FSP service and the Contractor's contract may be terminated immediately.

Mandatory CHP refresher training classes shall be attended. A minimum of four (4) hours refresher training per year shall be required (at Contractor's expense). **Contractors shall pay all Toll FSP vehicle operators and back-up vehicle operators for attending the required training.**

Vehicle operators will be required to utilize DCD equipment to input information about mileage, inspection, and each assist, which will include: location, vehicle make, model, license number, type of assistance provided, etc. Vehicle operators will be trained on using DCD equipment to enter data.

## **7.3 Operator Driving Record and Criminal History Check**

As required by California Vehicle Code Section 2340, all applicants and owners are required to have a driver's license and criminal history check. Only after a completed CHP 234F is received and accepted by CHP, a driver's license and preliminary criminal history check will be performed.

The driver's license check will consist of confirming that the applicant has a valid driver's license and the applicant's point count is within standards set forth in this SOP (refer to Chapter 11, Annex A).

The preliminary criminal history check will consist of a preliminary background check to determine if the applicant meets the criteria for a California Tow Truck Driver Certificate as outlined in California Public Resources Code Section 5164, California Vehicle Code Section 13377 and the FSP Contract. In addition, RCTC and SANBAG, or the CHP may, in its sole discretion, require an Employer to replace any driver or reject a potential driver who it determines is not suitable to represent the FSP Program with the public. If the applicant passes the preliminary criminal history check, the applicant shall submit to fingerprinting.

Driver's license and preliminary criminal history checks will be completed by CHP within ten (10) working days of the acceptance of a CHP 234F.

#### **7.4 Vehicle Operator Uniform**

It shall be the responsibility of the Contractor to provide the vehicle operator with specified uniforms, boots, name plate and other equipment. The equipment includes navy blue coveralls or shirts and pants. If coveralls are worn, they shall have a zip front.

Sleeves and pant legs shall be moderately tapered to avoid excessive fullness.

A safety vest with reflective stripes shall be worn and supplied by RCTC. RCTC will supply vests with the FSP logo patches already sewn on per CHP's required patch placement locations. An FSP logo patch is not required to be sewn on the navy blue FSP vehicle operator uniform.

A detachable brass or gold nameplate shall be worn with the first initial of the first name and full last name above the right chest pocket on the safety vest. The contractor is responsible for obtaining CHP approval of the drive name plates, and the contractor is responsible for the purchase and placement of the FSP vehicle operator name plate.

All FSP vehicle operators shall wear general duty black work boots with protective steel toe.

During cold weather, a navy blue sweater or sweatshirt may be worn under the uniform shirt/coveralls. A navy blue jacket may also be worn as a Contractor's option if it meets all the uniform specifications and is worn under the safety vest. Rain gear, if worn, shall be waterproofed material and yellow in color.

Hats, if worn, shall be baseball-type caps and navy blue in color. An "FSP" logo patch may be sewn on the hat above the brim. No other logos/names shall be accepted. A beanie may also be worn which must be navy blue in color and only worn with a jacket under the vest or long sleeve shirt.

**Contractor should refer to the most current SOP to ensure they are following the most recent requirements.** SOP revisions and updates shall be unilaterally issued by RCTC, as deemed necessary by RCTC management, and all changes, revisions and updates to the SOP, if any, shall supersede all previous or existing SOPs. A copy of the SOP is included as part of the original RFP package.

### **7.5 Local Office**

The Contractor shall provide a local office for contract administration purposes. This office shall be staffed by either the Contractor or a person who has the authority to conduct business and make decisions on behalf of the Contractor. The office shall have business hours coinciding with Contractor's Beat(s) hours of operation. Through the Proposal document shown in the Contractor Representative Form, the Contractor shall designate representatives who will be available at the office during hours of operation to make decisions on behalf of the Contractor. The office shall be established within close proximity to the Contractor's Beat(s) and the County of Riverside. Also note in the Scope of Services, Section 4.4, **a backup vehicle and a certified FSP vehicle operator must be available within a 30 minute request of the Beat area.**

This requirement may also determine if the local office is close enough to satisfy the requirements under this section.

The Contractor shall also provide **telephone, fax service, and email** through which he/she, or a responsible representative who has the authority to conduct business and make decisions on behalf of the Contractor, can be contacted during the non-service hours of operation for the length of the contract. During non-business hours, an answering machine provided at the Contractor's expense, shall be available to log calls, take complaints, etc. **A fax machine and an email address that is monitored daily** shall be provided for notification purposes during operational and non-service hours. The Contractor will be responsible for having a company representative monitor and review messages/notices on a daily basis.

### **7.6 Remedies and Liquidated Damages**

RCTC has a need to deal contractually with a range of failures by Contractors to meet contractual standards and requirements short of suspension or termination. Failure to meet contractual standards and requirements constitute a default under the contract and is subject to the various remedies provided in the contract, up to and including termination of the contract.

It is clear that any default that is related to service or contractor's readiness for service will either degrade service or lead to the degradation of service. The failure to meet contractual standards and requirements, therefore, causes damages to the FSP program and its participants (RCTC, CHP and Caltrans) and to the public being served by the FSP program. Because of the public service nature of the mission of the FSP, described generally in the Standard Operating Procedures (SOP), to keep traffic and commerce flowing on the regional freeways, the damages arising from contractor's failure to meet the contractual standards and requirements are impractical or extremely difficult to ascertain on an individual basis.

The contract has therefore established a series of remedies to attempt to deal with a range of defaults. The most egregious default will result in suspension or termination. Lesser defaults will result in the assessment of liquidated damages. These lesser remedies have been described in the SOP as fines, violations or penalties. This is not a correct characterization of the intent of the remedies. The remedies arise because the contractor is in default and the FSP and the public it serves is damaged by that default. The remedies are to compensate FSP for its damages and to encourage compliance with performance requirements of the contract.

**EXHIBIT “B”**

**Compensation and Payment**

**[INSERT FINAL PRICE PROPOSALS FROM CONTRACTOR’S PROPOSAL]  
And MOBILIZATION COST PAYMENT FORM, IF APPLICABLE**

DRAFT

## Agreement No. 17-45-061-05

**AMENDMENT NO. 5 TO AGREEMENT  
BETWEEN RIVERSIDE COUNTY TRANSPORTATION COMMISSION, ACTING  
AS THE RIVERSIDE COUNTY SERVICE AUTHORITY FOR FREEWAY  
EMERGENCIES, FOR FREEWAY SERVICE PATROL FOR BEAT #18 AND #19  
WITHIN RIVERSIDE COUNTY WITH PEPE'S TOWING  
SERVICES**

1. PARTIES AND DATE

This Amendment No. 5 for Freeway Service Patrol Services is made and entered into as of \_\_\_\_\_, 2022, by and between the Riverside County Transportation Commission, a public entity ("Commission"), acting as the Riverside County Service Authority for Freeway Emergencies (referred to herein as "SAFE"), and Pepe's Inc., a California corporation doing business as Pepe's Towing Services (referred to herein as "Contractor"). SAFE and Contractor are sometimes individually referred to herein as "Party" and collectively as "Parties".

2. RECITALS

- 2.1 SAFE and Contractor have entered into an agreement dated October 1, 2017, for the purpose of providing Freeway Service Patrol ("FSP") services on Beat No. 18 and 19 within Riverside County (the "Master Agreement").
- 2.2 SAFE and Contractor amended the Master Agreement on July 9, 2019 ("Amendment No. 1"), in order to add construction FSP services required for the State Route 60 truck lane construction project (the "60 TL Project").
- 2.3 SAFE and Contractor amended the Master Agreement on June 10, 2020 ("Amendment No. 2"), in order to exercise the first one-year option extending the term to September 30, 2021 and add construction FSP services required for the Caltrans 1-10 Tune-Up construction project ("1-10 Tune-Up Project") between Pennsylvania Avenue in Beaumont to SR-111 in Cabazon.
- 2.4 SAFE and Contractor entered into an Amended and Restated Amendment No. 2 to the Master Agreement ("Restated Amendment No. 2") on September 25, 2020 to expressly include the term extension.
- 2.5 SAFE and Contractor amended the Master Agreement on September 30, 2021, in order to exercise the second one-year option extending the term to September 30, 2022.

- 2.6 SAFE and Contractor amended the Master Agreement on July 13, 2022 in order to add fuel relief reimbursement.
- 2.7 SAFE and Contractor now desire to amend the Master Agreement in order to extend the term of the Master Agreement and provide a new hourly rate for Beat No. 18 and 19.

### 3. TERMS

- 3.1 The term of the Master Agreement, as set forth in Section 3.4 of the Master Agreement, shall be extended through March 31, 2023.
- 3.2 Services for Beat No. 18 and 19 shall be compensated as follows:

#### SCHEDULE OF HOURLY RATES

Classification	Hourly Rates
Contract – tow truck operators	<u>\$103.95</u>

- 3.3 The maximum not to exceed value of the Master Agreement shall not exceed Four Million, Two Hundred Ninety-Six Thousand, Eight Hundred Seventy-Two Dollars (\$4,296,872).
- 3.4 Except as amended by this Amendment No. 5, all provisions of the Master Agreement, as previously amended, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the Parties under this Amendment No. 5.
- 3.5 This Amendment No. 5 shall be governed by the laws of the State of California. Venue shall be in Riverside County.
- 3.6 A manually signed copy of this Amendment No. 5 which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment No. 5 for all purposes. This Amendment No. 5 may be signed using an electronic signature.
- 3.7 This Amendment No. 5 may be signed in counterparts, each of which shall constitute an original.

**[Signatures on following page]**



**SIGNATURE  
PAGE TO  
AGREEMENT NO. 17-45-061-05**

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date first herein above written.

**RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION**

**PEPE'S, INC.  
DBA PEPE'S TOWING SERVICES**

By: \_\_\_\_\_  
Anne Mayer, Executive Director

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

APPROVED AS TO FORM

ATTEST:

By: \_\_\_\_\_  
Best Best & Krieger  
General Counsel

By: \_\_\_\_\_

Its: \_\_\_\_\_

\* A corporation requires the signatures of two corporate officers.

One signature shall be that of the chairman of board, the president or any vice president and the second signature (on the attest line) shall be that of the secretary, any assistant secretary, the chief financial officer or any assistant treasurer of such corporation.

If the above persons are not the intended signators, evidence of signature authority shall be provided to RCTC.



**Agreement No. 16-45-103-05**

**AMENDMENT NO. 5 TO  
AGREEMENT FOR FREEWAY SERVICE PATROL SERVICES  
FOR BEAT NO. 91-T AND BEAT NO.15-T  
WITH E&S TOWING ENTERPRISES, INC. D/B/A STEVE'S TOWING**

**1. PARTIES AND DATE**

This Amendment No. 5 is made and entered into as of \_\_\_\_\_, 2022 by and between the Riverside County Transportation Commission acting in its capacity as the Riverside Service Authority for Freeway Emergencies ("SAFE"), a public entity, and E&S Towing Enterprises, Inc., a California corporation d/b/a Steve's Towing (referred to herein as "CONTRACTOR").

**2. RECITALS.**

- 2.1 SAFE and CONTRACTOR have entered into an agreement, dated December 29, 2016, for the provision of freeway patrol services on Beat No. 91-T on behalf of the SAFE (the "Master Agreement").
- 2.2 SAFE and CONTRACTOR have entered into an Amendment No. 1 to the Master Agreement, dated September 23, 2019, to extend the term of the Master Agreement to December 31, 2021, for the continued provision of freeway service patrol services.
- 2.3 SAFE and CONTRACTOR have entered into an Amendment No. 2 to the Master Agreement, dated June 10, 2020, in order to amend the Scope of Services to include freeway service patrol services for the 15 Express Lanes beat (Beat No. 15-T); provide a new hourly rate and additional compensation for such Services; and allocate funds for CONTRACTOR to outfit two trucks to be used for the Services to meet FSP compliance requirements.
- 2.4 SAFE and CONTRACTOR have entered into Amendment no. 3 to the Master Agreement, dated December 30, 2021, in order extend the term of the Master Agreement, provide a new hourly rate for Beat No. 91-T, and provide additional compensation for Services.
- 2.5 SAFE and Contractor amended the Master Agreement on July 13, 2022 in order to add fuel relief reimbursement.
- 2.6 SAFE and Contractor now desire to amend the Master Agreement in order to extend the term of the Master Agreement and provide new hourly rate for Beat No. 91-T and 15-T.

**3. TERMS**

- 3.1 The term of the Master Agreement, as set forth in Section 3.4 of the Master Agreement, shall be extended through March 31, 2023.
- 3.2 Services for Beat No. 91-T and 15-T shall be compensated as follows:

## SCHEDULE OF HOURLY RATES

<u>Classification</u>	<u>Hourly Rates</u>
Contract – tow truck operators	<u>\$84.00</u>

- 3.3 The maximum compensation to be provided under this Amendment No. 5 shall not exceed One Hundred Thirty Thousand, Nine Hundred Twenty Dollars (\$130,920).
- 3.4 The maximum not to exceed value of the Master Agreement, as amended by this Amendment No. 5 shall not exceed Two Million, Two Hundred Twenty-Four Thousand, Three Hundred Forty-Seven Dollars (\$2,224,347).
- 3.5 Except as amended by this Amendment No. 5, all provisions of the Master Agreement, as previously amended, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the parties under this Amendment No. 5.
- 3.6 This Amendment No. 5 shall be governed by the laws of the State of California. Venue shall be in Riverside County.
- 3.7 This Amendment No. 5 may be signed in counterparts, each of which shall constitute an original.
- 3.8 A manually signed copy of this Amendment No. 5 which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment No. 5 for all purposes. This Amendment No. 5 may be signed using an electronic signature.

**[Signatures on following page]**

**SIGNATURE PAGE  
TO  
AGREEMENT NO. 16-45-103-05**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Amendment as of the date first herein above written.

**RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION**

**E&S TOWING ENTERPRISES, INC.  
dba STEVE'S TOWING**

By: \_\_\_\_\_  
Anne Mayer, Executive Director

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**APPROVED AS TO FORM**

**ATTEST:**

By: \_\_\_\_\_  
Best Best & Krieger  
General Counsel

By: \_\_\_\_\_

Its: \_\_\_\_\_

\* A corporation requires the signatures of two corporate officers.

One signature shall be that of the chairman of board, the president or any vice president and the second signature (on the attest line) shall be that of the secretary, any assistant secretary, the chief financial officer or any assistant treasurer of such corporation.

If the above persons are not the intended signators, evidence of signature authority shall be provided to RCTC.



# **AGENDA ITEM 8**





<b><i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i></b>	
<b>DATE:</b>	August 22, 2022
<b>TO:</b>	Western Riverside County Programs and Projects Committee
<b>FROM:</b>	Joie Edles Yanez, Capital Projects Manager
<b>THROUGH:</b>	Anne Mayer, Executive Director
<b>SUBJECT:</b>	Agreement for Preparation of Plans, Specifications and Estimate for the Mid County Parkway Project Construction Package No. 3 along Ramona Expressway

**STAFF RECOMMENDATION:**

This item is for the Committee to:

- 1) Award Agreement No. 23-31-007-00 to Jacobs Engineering Group to prepare plans, specifications, and estimates (PS&E) for the Mid County Parkway Construction Package No. 3 (MCP3) from approximately one mile east of Rider Street to Warren Road along the Ramona Expressway (Project), in the county of Riverside in the amount of \$10,642,182 plus a contingency amount of \$2,357,818 for a total amount not to exceed \$13,000,000;
- 2) Approve the use of \$5,686,000 of state Senate Bill 1 Local Partnership Program (LPP) Formula funds for Project design;
- 3) Approve the use of \$7,314,000 of Transportation Uniform Mitigation Fee - Community Environmental Transportation Acceptability Process (TUMF-CETAP) funds for Project design;
- 4) Approve Cooperative Agreement No. 23-31-004-00 with County of Riverside Transportation and Land Management Agency (CRTLMA) for MCP3 final design, right of way (ROW) acquisition, construction, and maintenance. This agreement includes a \$1,000,000 contribution by CRTLMA to RCTC for the MCP 3 project;
- 5) Approve Agreement Nos. 23-31-005-00 and 23-31-006-00 with Rivers & Land Conservancy and the use of \$1,004,672 of Measure A funds for endowment toward the conservation easement of Sweeney and San Timoteo Canyon mitigation sites;
- 6) Approve the use of \$15,000,000 [\$13,279,500 of Surface Transportation Block Grant Program (STBG) and a match of \$1,720,500 of TUMF-CETAP] for right of way corridor (ROW) preservation within MCP Construction Package 2 (MCP2) limits;
- 7) Authorize the Executive Director, pursuant to legal counsel review, to finalize the conservation easement and endowment mitigation agreements on behalf of the Commission;
- 8) Authorize the Executive Director to make changes between fund types within the total amounts approved by the Commission to facilitate the most efficient use of funds;

- 9) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements on behalf of the Commission;
- 10) Authorize the Executive Director or designee to approve contingency work as may be required for the Project; and
- 11) Forward to Commission for final action

### **Ultimate MCP Project Background**

The MCP is a proposed 16-mile east-west highway that will stretch from State Route-79 in the Hemet Valley to Interstate (I)-215 at Placentia Avenue in the city of Perris (City). In 1998, as part of the Community and Environmental Transportation Acceptability Process (CETAP) the Commission identified new major transportation facilities to serve the current and future transportation needs of Western Riverside County while preserving critical habitat. This process represented a balanced approach to the provision of important transportation improvements, while limiting the impacts on communities and the environment. The CETAP corridors are an integral part of the County's general plan and the Multiple Species Habitat Conservation Plan (MSHCP). As part of the CETAP, the Commission approved moving forward with project level environmental studies for the MCP project on December 13, 2003.

At its April 2015 meeting, the Commission as the lead agency under the California Environmental Quality Act (CEQA) certified the final environmental impact report, adopted findings pursuant to CEQA, adopted a mitigation monitoring and reporting program, adopted a statement of overriding considerations, and approved the MCP project. As the lead agency under the National Environmental Policy Act (NEPA), FHWA approved the final environmental impact statement on April 15, 2015, and issued a record of decision for the MCP project in August 2015.

As the Commission developed its Strategic Assessment, which was approved in January 2016, it was recognized that in order to deliver major new corridor projects such as the MCP and 79 Realignment, separate smaller construction packages would have to be developed that are fundable and buildable, and at the same time provide immediate public benefit. Staff was directed to study phasing and prioritization alternatives to determine if/how projects could be scaled or deferred, to reflect funding constraints and state and federal policy challenges.

The I-215/Placentia Avenue Interchange project was the first construction package along MCP, which is scheduled to complete in September 2022.

Following the completion of the I-215/Placentia Avenue interchange project, RCTC intended on beginning design and ROW efforts for the subsequent project, MCP2, in the City and unincorporated county of Riverside. This project included constructing approximately three miles of the 16-mile MCP from Wilson Avenue to Ramona Expressway.

### **MCP 3 Development**

At the February 28, 2022 Committee meeting, staff planned to present an item to award an agreement for preparation of PS&E for the MCP2 from Redlands Avenue to Ramona Expressway. The City objected to the project so the Committee directed staff to meet with the City to try to address its objections.

After holding several meetings with the City to attempt to resolve its concerns, the Commission on May 11, 2022, adopted a decision to defer work on MCP2. Instead, staff was directed to work with the CRTLMA to develop a scope for an alternative construction package within the County jurisdiction, along Ramona Expressway, to address ongoing safety issues and continue progress on the overall MCP project.

Commission and CRTLMA staff met to develop the scope for a project that would address the goals noted above and they successfully identified a roughly 8.6-mile segment of Ramona Expressway from approximately one mile east of Rider Street to Warren Road. This segment experiences the highest occurrence of accidents and fatalities along the Ramona Expressway and would advance a significant section of the MCP.

The existing Ramona Expressway within this segment consists of one lane in each direction with passing lanes in a few locations. The proposed improvements will add two new eastbound lanes to the existing two lanes, restriping to convert the existing Ramona Expressway into two westbound lanes, a raised median with delineators to separate the eastbound and westbound travel lanes, a new bridge over the San Jacinto River, and traffic signals at several intersections. This segment is included in the original MCP and the proposed improvements are consistent with the ultimate MCP. See Attachment 1 Exhibit Map.

### **Procurement Process**

Due to the similar nature in the scopes of work between MCP2 and MCP3, staff is recommending the procurement process used for MCP2 be used to award MCP3 as described below.

Pursuant to Government Code 4525 et seq, selection of architectural, engineering, and related services shall be made on the basis of demonstrated competence and on professional qualifications necessary for the satisfactory performance of the services required. Therefore, staff used the qualification method of selection for the procurement of PS&E services for the Project. Evaluation criteria included elements such as qualifications of firm, staffing and project organization, project understanding and approach, and the ability to respond to the requirements set forth under the terms of the request for qualifications (RFQ).

RFQ No. 21-31-119-00 for preparation of PS&E for the MCP2 Project was released by staff on August 5, 2021. The RFQ was posted on the Commission's Planet Bids website, which is accessible

through the Commission's website. Through Planet Bids, 132 firms downloaded the RFQ; 33 of these firms are located in Riverside County. A pre-submittal meeting was held on August 12, 2021 and was attended by 18 firms. Staff responded to all questions submitted by potential proposers prior to the August 19, 2021 clarification deadline. Five firms – HDR Engineering and WKE (Riverside, CA); Jacobs Engineering Group (Ontario, CA); Mark Thomas & Company (Irvine, CA); TranSystems Corporation (Ontario, CA); and T.Y. Lin International (Ontario, CA) submitted responsive and responsible statements of qualifications prior to the 2:00 p.m. submittal deadline on September 16, 2021. Based on the evaluation criteria set forth in the RFQ, the firms were evaluated and scored by an evaluation committee comprised of Commission, Bechtel, and CRTLMA of Riverside staff.

Based on the evaluation committee's assessment of the written proposals and pursuant to the terms of the RFQ, the evaluation committee shortlisted and invited two firms, Jacobs Engineering Group and T.Y. Lin International, to the interview phase of the evaluation and selection process. Interviews were conducted on October 28, 2021.

The evaluation committee conducted a subsequent evaluation of each firm, based on both written and interview components presented to the evaluation committee by each proposer. Accordingly, the evaluation committee recommended contract award to Jacobs Engineering Group to provide PS&E services for MCP2, as it earned the highest total evaluation score.

Jacobs Engineering Group was selected to perform the PS&E for the MCP2 based on their qualifications and experience. The scope of work originally anticipated is similar in nature to the scope in the newly prioritized section from approximately one mile east of Rider Street to Warren Road. In addition, there is an urgency by RCTC and the CRTLMA to begin the design of this section to address safety concerns.

Subsequently, staff negotiated the scope of work (including the appropriate level of effort, labor categories/mix, etc.), cost, and schedule proposal received from Jacobs Engineering Group for the Project services and established a fair and reasonable price. The proposed cost, including contingency, is \$13,000,000. A 22.16 percent contingency is assumed for this project. The contingency has been established at a higher amount than the typical 10 percent for most contracts due to the expedited nature of this project and unknown issues that may arise during the design development. Staff anticipates the PS&E will be completed mid-2024.

### **Agency Agreements**

#### **CRTLMA Cooperative Agreement**

A cooperative agreement with CRTLMA is required to identify the Commission and CRTLMA responsibilities for final design, right of way, construction, and operation and maintenance. The Project will be designed in accordance with CRTLMA standards and at the completion of construction will become part of the CRTLMA's highway system.

As part of the agreement, CRTLMA is contributing \$1,000,000 for the construction of MCP3. In addition, to address concerns raised by the Commission following the sequence of events that led to MCP2 not moving forward, the cooperative agreement includes language to address the Commission's concerns about CRTLMA withdrawing support for the project, and to allow RCTC to recover project costs expended from the effective date of the cooperative agreement. This language has been discussed and reviewed with CRTLMA and RCTC legal counsel.

### **Rivers & Land Conservancy Endowment Agreement**

In December 2015, the Commission purchased 154.3 acres of land (referred to as the Sweeney parcel), which satisfied a majority of the MSHCP habitat requirements for the ultimate MCP project. In July 2020, the Commission purchased an additional 32.63 acres of land (referred to as the San Timoteo Canyon parcel), which satisfies the remaining environmental mitigation requirements for the MCP Project. These lands will be monitored and maintained by the Commission for a five-year period that began in 2021 before they are transferred to Rivers & Land Conservancy. As such, the Project requires an endowment and conservation easement agreement with the Rivers & Land Conservancy in the amount of \$1,004,672 to satisfy the conditions set forth in the California Department of Fish and Wildlife (CDFW) 1602 Permit. The endowment will provide a one-time contribution for maintenance of the property in perpetuity.

### **Right of Way**

The Commission previously programmed \$36,939,000 of Surface Transportation Block Grant (STBG) federal funds for acquisition of ROW for MCP2. Of this amount, approximately \$21,939,000 of the funds will be reprogrammed onto MCP3 construction, leaving approximately \$15,000,000 on MCP2. Several core parcels needed for the ultimate alignment of the MCP may soon be at imminent risk of development. Leaving this funding in place will allow staff to proceed with acquisition of some of the parcels before they are developed. The remaining funds will be moved to construction of MCP3.

It is anticipated that most of the work for MCP3 will be within CRTLMA's ROW along Ramona Expressway. Only minimal ROW will be needed near the area of the new bridge over the San Jacinto River and if a signalized intersection needs additional ROW. The details of this ROW impact will be determined during the final design of the project.

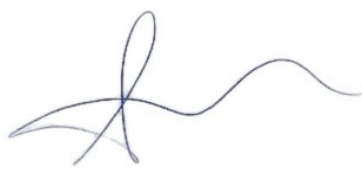
### **Fiscal Impact**

#### **Funding Source Breakdown**

Item	Dollar Amount	Fund Source
1 MCP 3 PS&E Services	\$5,686,000	LPP Formula
	<u>\$7,314,000</u>	TUMF CETAP
	<b>\$13,000,000</b>	
2 Conservation Easement Endowment Funds	<b>\$1,004,672</b>	Measure A
3 MCP 2 ROW Preservation	\$13,279,500	STBG
	<u>\$1,720,500</u>	TUMF CETAP (match)
	<b>\$15,000,000</b>	
4 CRTLMA Contribution for MCP 3 Project	<b>\$1,000,000</b>	CRTLMA
<b>Total</b>	<b>\$30,004,672</b>	

#### **Expenditure Schedule**

Item	FY 2022/23	FY 2023/24+	GL/Project Accounting No.
1 MCP 3 PS&E Services	\$3,250,000	\$9,750,000	002328
2 Conservation Easement Endowment Funds	\$1,004,672	0	002320
3 MCP 2 ROW Preservation	0	\$15,000,000	002324
4 CRTLMA Contribution for MCP	0	\$1,000,000	NA
<b>Total</b>	<b>\$4,254,672</b>	<b>\$25,750,000</b>	

Financial Information					
In Fiscal Year Budget:	Yes	Year:	FY 2022/23 FY 2023/24+	Amount:	\$4,254,672 \$25,750,000
Source of Funds:	LPP \$5,686,000 TUMF CETAP \$9,034,500 STBG \$13,279,500 Measure A \$1,004,672 CRTLMA Contribution \$1,000,000			Budget Adjustment:	No
GL/Project Accounting No.:	002328 81102 00000 0000 261 31 81101 MCP 3 002320 81405 00000 0000 261 31 81405 MCP Endowment 002324 81401 00000 0000 261 31 81401 MCP 2				
Fiscal Procedures Approved:				Date:	08/11/2022

Attachments:

- 1) Exhibit Map – Approximately One Mile East of Rider Street to Warren Road
- 2) Agreement No. 23-31-007-00 with Jacobs Engineering Group
- 3) Agreement No. 23-31-004-00 with CRTLMA
- 4) Agreement No. 23-31-005-00 with Rivers & Land Conservancy for San Timoteo Canyon Mitigation Endowment Agreement
- 5) Agreement No. 23-31-006-00 with Rivers & Land Conservancy for Sweeney Mitigation Endowment Agreement





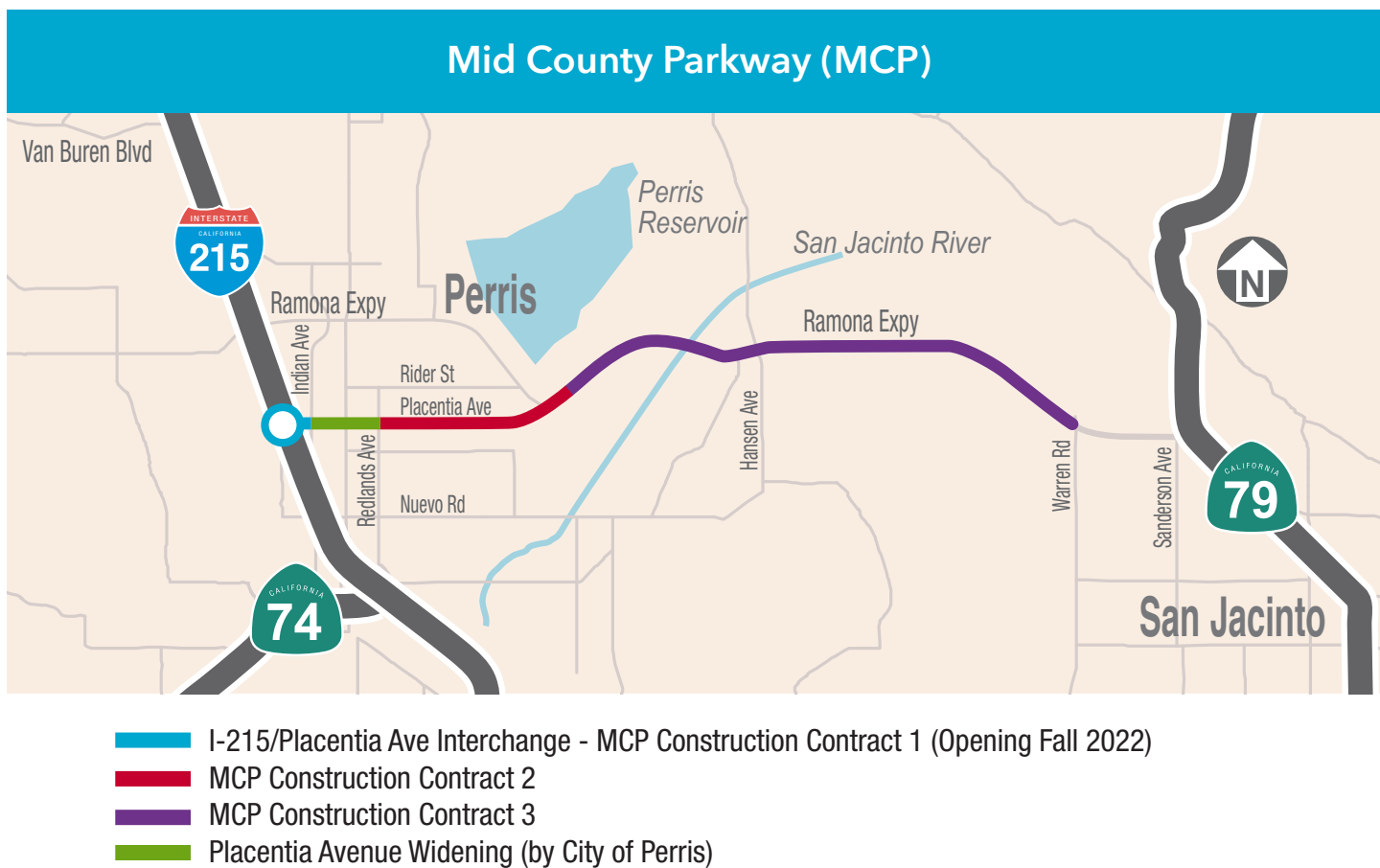


Figure 1. Ultimate MCP Project Layout

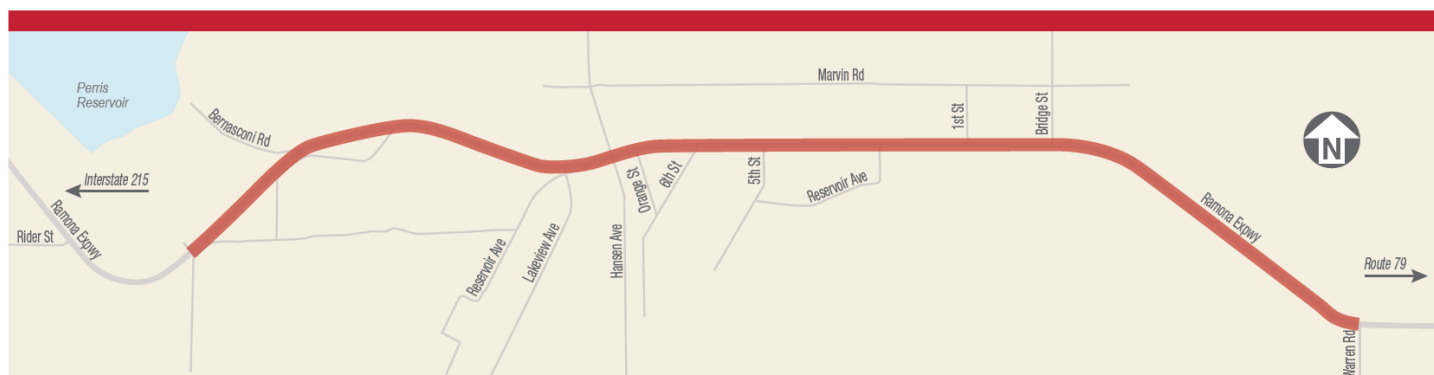


Figure 2. MCP 3 Layout



**AGREEMENT NO. 23-31-007-00**

**MODEL  
PROFESSIONAL SERVICES AGREEMENT  
  
RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
JACOBS ENGINEERING GROUP INC.  
FOR  
PREPARATION OF PLANS, SPECIFICATIONS, AND ESTIMATES  
AND ESTIMATES  
FOR THE  
MID COUNTY PARKWAY PROJECT CONSTRUCTION CONTRACT NO. 3**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and JACOBS ENGINEERING GROUP INC. ("Consultant"), a CORPORATION.

**2. RECITALS.**

2.1 On November 8, 1988 the Voters of Riverside County approved Measure A authorizing the collection of a one-half percent (1/2 %) retail transactions and use tax (the "tax") to fund transportation programs and improvements within the County of Riverside, and adopting the Riverside County Transportation Improvement Plan (the "Plan").

2.2 Pursuant to Public Utility Code Sections 240000 et seq., the Commission is authorized to allocate the proceeds of the Tax in furtherance of the Plan.

2.3 On November 5, 2002, the voters of Riverside County approved an extension of the Measure A tax for an additional thirty (30) years for the continued funding of transportation and improvements within the County of Riverside.

2.4 Consultant desires to perform and assume responsibility for the provision of certain professional services required by the Commission on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing construction management, engineering surveying and testing services to public clients, is licensed in the State of California (as necessary), and is familiar with the plans of the Commission.

2.5 The Commission desires to engage Consultant to render such services for the Mid County Parkway Project Construction Contract No. 3 ("Project"), as set forth in this Agreement.

### **3. TERMS.**

3.1 General Scope of Services. Consultant shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise, and incidental and customary work necessary to fully and adequately supply the professional construction management, engineering surveying and testing services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.2 Commencement of Services. The Consultant shall commence work upon receipt of a written "Notice to Proceed" or "Limited Notice to Proceed" from Commission.

3.3 Term. The term of this Agreement shall be from the date of execution of this Agreement or the date of issuance of the Notice to Proceed by the Commission, whichever occurs first, to the issuance by the Commission to Consultant of a Notice of Final Acceptance, as defined in paragraph 3.12 below, or December 31, 2027, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

3.4 Commission's Representative. The Commission hereby designates the Commission's Executive Director, or his or her designee, to act as its Representative for the performance of this Agreement ("Commission's Representative"). Commission's Representative shall have the authority to act on behalf of the Commission for all purposes under this Agreement. Commission's Representative shall also review and give approval, as needed, to the details of Consultant's work as it progresses. Consultant shall not accept direction or orders from any person other than the Commission's Representative or his or her designee.

3.5 Consultant's Representative. Consultant hereby designates Alicia Cannon to act as its Representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to act on behalf of Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his professional skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this

Agreement. Consultant shall work closely and cooperate fully with Commission's Representative and any other agencies which may have jurisdiction over, or an interest in, the Services. Consultant's Representative shall be available to the Commission staff at all reasonable times. Any substitution in Consultant's Representative shall be approved in writing by Commission's Representative.

3.6 Substitution of Key Personnel. Consultant has represented to the Commission that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval by the Commission. In the event that the Commission and Consultant cannot agree as to the substitution of the key personnel, the Commission shall be entitled to terminate this Agreement for cause, pursuant to the provisions of Section 3.14. The key personnel for performance of this Agreement are identified in the attached organization chart.

3.7 Preliminary Review of Work. All reports, working papers, and similar work products prepared for submission in the course of providing Services under this Agreement shall be submitted to the Commission's Representative in draft form, and the Commission may require revisions of such drafts prior to formal submission and approval. In the event plans and designs are to be developed as part of the Project, final detailed plans and designs shall be contingent upon obtaining environmental clearance as may be required in connection with the Project. In the event that Commission's Representative, in his sole discretion, determines the formally submitted work product to be not in accordance with the standard of care established under this agreement, Commission's Representative may require Consultant to revise and resubmit the work at no cost to the Commission.

3.8 Appearance at Hearings. If and when required by the Commission, Consultant shall render assistance at public hearings or other meetings related to the Project or necessary to the performance of the Services. However, Consultant shall not be required to, and will not, render any decision, interpretation or recommendation regarding questions of a legal nature or which may be construed as constituting a legal opinion.

3.9 Standard of Care; Licenses. Consultant represents and maintains that it is skilled in the professional calling necessary to perform all Services, duties and obligations required by this Agreement to fully and adequately complete the Project. Consultant shall perform the Services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents and warrants to the Commission that its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement.

Consultant shall perform, at its own cost and expense and without reimbursement from the Commission, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein, and shall be fully responsible to the Commission for all damages and other liabilities provided for in the indemnification provisions of this Agreement arising from the Consultant's errors and omissions. Any employee of Consultant or its sub-consultants who is determined by the Commission to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the Commission, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.10 Opportunity to Cure. Commission may provide Consultant an opportunity to cure, at Consultant's expense, all errors and omissions which may be disclosed during Project implementation. Should Consultant fail to make such correction in a timely manner, such correction may be made by the Commission, and the cost thereof charged to Consultant.

3.11 Inspection of Work. Consultant shall allow the Commission's Representative to inspect or review Consultant's work in progress at any reasonable time.

3.12 Final Acceptance. Upon determination by the Commission that Consultant has satisfactorily completed the Services required under this Agreement and within the term set forth in Section 3.3, the Commission shall give Consultant a written Notice of Final Acceptance. Upon receipt of such notice, Consultant shall incur no further costs hereunder, unless otherwise specified in the Notice of Final Acceptance. Consultant may request issuance of a Notice of Final Acceptance when, in its opinion, it has satisfactorily completed all Services required under the terms of this Agreement. In the event copyrights are permitted under this Agreement, then in connection with Federal funding, it is hereby acknowledged and agreed that the United States Department of Transportation shall have the royalty-free non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for governmental purposes.

3.13 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. For example, and not by way of limitation, Consultant shall keep itself fully informed of and in compliance with all implementing regulations, design standards, specifications, previous commitments that must be incorporated in the design of the Project, and administrative controls including those of the United States Department of Transportation. Compliance with Federal procedures may include completion of the applicable environmental documents and approved by a governmental body. If the Consultant performs any work knowing it to be

contrary to the requirements of laws, rules and regulations and without giving written notice to the Commission, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold Commission, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

### 3.14 Termination.

3.14.1 Notice; Reason. Commission may, by written notice to Consultant, terminate this Agreement, in whole or in part, at any time by giving written notice to Consultant of such termination, and specifying the effective date thereof ("Notice of Termination"). Such termination may be for Commission's convenience or because of Consultant's failure to perform its duties and obligations under this Agreement, including, but not limited to, the failure of Consultant to timely perform Services pursuant to the Schedule of Services described in Section 3.15 of this Agreement. Consultant may not terminate this Agreement except for cause.

3.14.2 Discontinuance of Services. Upon receipt of the written Notice of Termination, Consultant shall discontinue all affected Services as directed in the Notice or as otherwise provided herein, and deliver to the Commission all Documents and Data, as defined in this Agreement, as may have been prepared or accumulated by Consultant in performance of the Services, whether completed or in progress.

3.14.3 Effect of Termination For Convenience. If the termination is to be for the convenience of the Commission, the Commission shall compensate Consultant for Services fully and adequately provided through the effective date of termination. Such payment shall include a prorated amount of profit, if applicable, but no amount shall be paid for anticipated profit on unperformed Services. Consultant shall provide documentation deemed adequate by Commission's Representative to show the Services actually completed by Consultant prior to the effective date of termination. This Agreement shall terminate on the effective date of the Notice of Termination.

3.14.4 Effect of Termination for Cause. If the termination is for cause, Consultant shall be compensated for those Services which have been fully and adequately completed and accepted by the Commission as of the date the Commission provides the Notice of Termination. In such case, the Commission may take over the work and prosecute the same to completion by agreement or otherwise. Further, Consultant shall be liable to the Commission for any reasonable additional costs incurred by the Commission to revise work for which the Commission has compensated Consultant under this Agreement, but which the Commission has determined in its sole discretion needs to be revised, in part or whole, to complete the Project because it did not meet the standard of care established in Section 3.9. Termination of this Agreement for cause may be considered by the Commission in determining whether to enter into future agreements with Consultant.

3.14.5 Cumulative Remedies. The rights and remedies of the Parties provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

3.14.6 Procurement of Similar Services. In the event this Agreement is terminated, in whole or in part, as provided by this Section, the Commission may procure, upon such terms and in such manner as it deems appropriate, services similar to those terminated.

3.14.7 Waivers. Consultant, in executing this Agreement, shall be deemed to have waived any and all claims for damages which may otherwise arise from the Commission's termination of this Agreement, for convenience or cause, as provided in this Section.

### 3.15 Schedule and Progress of Services.

3.15.1 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, the Commission shall respond to Consultant's submittals in a timely manner. Upon request of Commission's Representative, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.15.2 Modification of the Schedule. Consultant shall regularly report to the Commission, through correspondence or progress reports, its progress in providing required Services within the scheduled time periods. Commission shall be promptly informed of all anticipated delays. In the event that Consultant determines that a schedule modification is necessary, Consultant shall promptly submit a revised Schedule of Services for approval by Commission's Representative.

3.15.3 Trend Meetings. Consultant shall conduct trend meetings with the Commission's Representative and other interested parties, as requested by the Commission, on a bi-weekly basis or as may be mutually scheduled by the Parties at a standard day and time. These trend meetings will encompass focused and informal discussions concerning scope, schedule, and current progress of Services, relevant cost issues, and future Project objectives. Consultant shall be responsible for the preparation and distribution of meeting agendas to be received by the Commission and other attendees no later than three (3) working days prior to the meeting.

3.15.4 Progress Reports. As part of its monthly invoice, Consultant shall submit a progress report, in a form determined by the Commission, which will



indicate the progress achieved during the previous month in relation to the Schedule of Services. Submission of such progress report by Consultant shall be a condition precedent to receipt of payment from the Commission for each monthly invoice submitted.

### 3.16 Delay in Performance.

3.16.1 Excusable Delays. Should Consultant be delayed or prevented from the timely performance of any act or Services required by the terms of the Agreement by reason of acts of God or of the public enemy, acts or omissions of the Commission or other governmental agencies in either their sovereign or contractual capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather, performance of such act shall be excused for the period of such delay.

3.16.2 Written Notice. If Consultant believes it is entitled to an extension of time due to conditions set forth in subsection 3.16.1, Consultant shall provide written notice to the Commission within seven (7) working days from the time Consultant knows, or reasonably should have known, that performance of the Services will be delayed due to such conditions. Failure of Consultant to provide such timely notice shall constitute a waiver by Consultant of any right to an excusable delay in time of performance.

3.16.3 Mutual Agreement. Performance of any Services under this Agreement may be delayed upon mutual agreement of the Parties. Upon such agreement, Consultant's Schedule of Services shall be extended as necessary by the Commission. Consultant shall take all reasonable steps to minimize delay in completion, and additional costs, resulting from any such extension.

### 3.17 Status of Consultant/Subconsultants.

3.17.1 Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Commission retains Consultant on an independent contractor basis and not as an employee, agent or representative of the Commission. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries and other amounts due such personnel in connection with their performance of Services and as required by law. Consultant shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, disability insurance, and workers' compensation insurance.

3.17.2 Prevailing Wages. By its execution of this Agreement, Consultant certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Copies of the prevailing rate of per diem wages are on file at the Commission's offices. Consultant shall make copies of the prevailing rates of per diem wages for each craft; classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the Commission, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Certified Payrolls are to be submitted whenever required by Prevailing Wage laws.

3.17.3 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein, without the prior written consent of the Commission. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.17.4 Subcontracting. Consultant shall not subcontract any portion of the work or Services required by this Agreement, except as expressly stated herein, without prior written approval of the Commission. If Consultant wishes to use a firm as a subcontractor which is not specified in the proposal upon which this Agreement was awarded, prior written approval must be obtained from the Commission. The Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

Consultant has, as part of its proposal, identified certain companies/firms that will be subconsultants utilized by Consultant ("Subconsultants") for Project delivery. A list of said Subconsultants is attached hereto as Exhibit "C" and made a part hereof. The Commission hereby approves the use by Consultant of the Subconsultants identified in Exhibit "C". In the event and prior to the replacement of any Subconsultant approved herein, the Consultant shall seek and obtain the Commission's written approval. Exhibit "C" also sets forth the rates at which each Subconsultant shall bill the Consultant for Services and that are subject to reimbursement by the Commission to Consultant. The cost of Addition Direct Costs, as defined in exhibit "C," shall be the same for both the Consultant and all subconsultants, unless otherwise identified in Exhibit "C".

Consultant acknowledges that approval of Consultant's utilization of the identified Subconsultants together with the incorporation of Subconsultants' rate schedules and cost proposals into this Agreement shall in no way be construed to create any contractual relationship between any Subconsultant and the Commission. The Subconsultant rate schedules and cost proposals contained herein are for accounting purposes only. In the event that any Subconsultant shall bring any action, claim or proceeding purporting to enforce any right purportedly arising under this Agreement, the Consultant shall be responsible for the Commission's reasonable legal fees without regard to the merits of any such claim.

### 3.18 Ownership of Materials/Confidentiality.

3.18.1 Documents & Data. This Agreement creates an exclusive and perpetual license for Commission to copy, use, modify, reuse, or sub-license any and all copyrights and designs embodied in plans, specifications, studies, drawings, estimates, materials, data and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data").

Consultant shall require all subcontractors to agree in writing that Commission is granted an exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement.

Consultant represents and warrants that Consultant has the legal right to grant the exclusive and perpetual license for all such Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the Commission.

Commission shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at Commission's sole risk.

3.18.2 Intellectual Property. In addition, Commission shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media ("Intellectual Property") prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement.

The Commission shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid

for wholly or in part by Commission, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of Commission.

Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of the Commission.

All materials and documents which were developed or prepared by the Consultant for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Consultant. However, unless otherwise identified and stated prior to execution of this Agreement, Consultant represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

Commission further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.

3.18.3 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of Commission, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use Commission's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of Commission.

3.19.1 Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold Commission, its directors, officials, officers, employees, consultants, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to alleged negligent acts, omissions, or willful misconduct of Consultant, its officials, officers,

employees, agents, consultants, and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of consequential damages, expert witness fees, and attorneys fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Commission, its directors, officials, officers, employees, consultants, agents, or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Commission or its directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission and its directors, officials, officers, employees, consultants, agents, and/or volunteers, for any and all legal expenses and costs, including reasonable attorney's fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Commission, its directors, officials officers, employees, consultants, agents, or volunteers. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

**3.19.2 Indemnification.** To the fullest extent permitted by law, Consultant shall defend, indemnify and hold City, its council, officials, officers, employees, consultants, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to alleged negligent acts, omissions, or willful misconduct of Consultant, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of consequential damages, expert witness fees, and attorneys fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, consultants, agents, or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be

rendered against Commission or its directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse City and its directors, officials, officers, employees, consultants, agents, and/or volunteers, for any and all legal expenses and costs, including reasonable attorney's fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City, its council, officials, officers, employees, consultants, agents, or volunteers. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

### 3.20 Insurance.

3.20.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the Commission that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

3.20.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same types of insurance for the duration of the Agreement. Consultant's insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *if Consultant has employees, Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal and advertising injury and property damage. If General Liability Insurance or includes a general aggregate limit, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily

injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Statutory Workers' Compensation limits as required by the applicable Labor Code and Employer's Liability limits of no less than \$1,000,000 per accident for bodily injury or disease.

3.20.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim.

3.20.4 Aircraft Liability Insurance. Consultant, *prior* to the direct or indirect use of any civil aircraft to provide Service under this Agreement, shall procure and maintain, or cause to be procured and maintained, aircraft liability insurance or equivalent form, with a single limit of not less than \$5,000,000 per each occurrence. Such insurance shall include coverage for owned, hired and non-owned aircraft and passengers, and shall name, or be endorsed to name, the Commission, its directors, officials, officers, employees, consultants, and agents as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant.

3.20.5 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the Commission to add the following provisions to the insurance policies:

(A.1) General Liability. The general liability policy shall be endorsed to state that: (1) the Commission, its directors, officials, officers, employees and agents shall be covered as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the Commission, its directors, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Commission, its directors, officials, officers, employees and agents shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(A.2) General Liability. The general liability policy shall be endorsed to state that: (1) the City, its council, officials, officers, employees and agents shall be covered as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its council, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its council, officials, officers, employees and agents shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B.1) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the Commission, its directors, officials, officers, employees and agents shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Commission, its directors, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Commission, its directors, officials, officers, employees and agents shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B.2) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its council, officials, officers, employees and agents shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Commission, its directors, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, council, officials, officers, employees and agents shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Commission, its directors, officials, officers, employees and agents for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Commission; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Commission, its directors, officials, officers, employees and agents.

3.20.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Commission. If the Commission does not approve the deductibles or self-insured retentions as presented, Consultant shall guarantee that, at the option of the Commission, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the



Commission, its directors, officials, officers, employees and agents; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.20.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A: VIII, licensed to do business in California, and satisfactory to the Commission.

3.20.8 Verification of Coverage. Consultant shall furnish Commission with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the Commission. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by the Commission before work commences. The Commission reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.20.9 Other Insurance. At its option, the Commission may require such additional coverage(s), limits and/or the reduction of deductibles or retentions it considers reasonable and prudent based upon risk factors that may directly or indirectly impact the Project. In retaining this option Commission does not warrant Consultant's insurance program to be adequate. Consultant shall have the right to purchase insurance in addition to the insurance required in this Section.

3.21 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### 3.22 Fees and Payment.

3.22.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall be on the basis of direct costs plus a fixed fee as further set forth in Exhibit "C" and shall not exceed the maximum amount of Ten Million Six

Hundred Forty-Two Thousand, One Hundred Eighty-Three Dollars (\$10,642,183), without written approval of Commission's Executive Director.

3.22.2 Payment of Compensation. Consultant shall submit a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the Statement. Charges specific to each Milestone listed in the Schedule of Services shall be listed separately on an attachment to each statement. Each statement shall be accompanied by a monthly progress report and spreadsheets showing hours expended for each task for each month and the total Project to date. Each statement shall include a cover sheet bearing a certification as to the accuracy of the statement signed by the Consultant's Project Manager or other authorized officer.

3.22.3 Additional Work. Any work or activities that are in addition to, or otherwise outside of, the Services to be performed pursuant to this Agreement shall only be performed pursuant to a separate agreement between the parties. Notwithstanding the foregoing, the Commission's Executive Director may make a change to the Agreement as permitted by law or authorized by the Commission. .

(a) In addition to the changes authorized above, a modification which is signed by Consultant and the Commission's Executive Director, other than a Cardinal Change, may be made in order to: (1) make a negotiated equitable adjustment to the Agreement price, delivery schedule and other terms resulting from the issuance of a Change Order, (2) reflect definitive letter contracts, and (3) reflect other agreements of the parties modifying the terms of this Agreement ("Bilateral Contract Modification").

(b) Consultant shall not perform, nor be compensated for any change, without written authorization from the Commission's Executive Director as set forth herein. In the event such a change authorization is not issued and signed by the Commission's Executive Director, Consultant shall not provide such change.

3.22.4 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by the Commission's Representative.

### 3.23 Prohibited Interests.

3.23.1 Solicitation. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or

making of this Agreement. For breach or violation of this warranty, the Commission shall have the right to rescind this Agreement without liability.

3.23.2 Conflict of Interest. For the term of this Agreement, no member, officer or employee of the Commission, during the term of his or her service with the Commission, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.23.3 Conflict of Employment. Employment by the Consultant of personnel currently on the payroll of the Commission shall not be permitted in the performance of this Agreement, even though such employment may occur outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, the employment by the Consultant of personnel who have been on the Commission payroll within one year prior to the date of execution of this Agreement, where this employment is caused by and/or dependent upon the Consultant securing this or related Agreements with the Commission, is prohibited.

3.23.4 Covenant Against Contingent Fees. The Consultant represents and warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the Commission shall have the right to terminate this Agreement without liability pursuant to Section 3.14, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

3.23.5 Covenant Against Expenditure of Local Agency, State or Federal Funds for Lobbying. **Omitted Intentionally**

3.24 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred and fees charged under this Agreement. The Federal Acquisition Regulations in Title 48, CFR 31 shall be the governing factors regarding allowable elements of cost. All such records shall be clearly identifiable. Consultant shall allow a representative of the Commission or any duly authorized representative of the Commission during normal business hours to examine, audit, and make transcripts or copies of any and all ledgers and books of account, invoices, vouchers, canceled checks, and any other records or documents created pursuant to this Agreement. All such information shall be retained by Consultant for at least three (3) years following termination of this Agreement.

3.25 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin,

ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.26 Right to Employ Other Consultants. Commission reserves the right to employ other consultants in connection with the Project. As required, Consultant shall cooperate fully with any other consultant engaged by the Commission on the Project.

3.27 Governing Law. This Agreement shall be governed by and construed with the laws of the State of California. Venue shall be in Riverside County.

3.28 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and, all other costs of such actions.

3.29 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.30 Headings. Article and Section Headings, paragraph captions or marginal headings contained in this Agreement are for convenience only and shall have no effect in the construction or interpretation of any provision herein.

3.31 Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**CONSULTANT:**

Jacobs Engineering Group, Inc.  
3257 E. Guasti Road, Suite 120  
Ontario, CA 91761

Attn: Alicia Cannon

**COMMISSION:**

Riverside County  
Transportation Commission  
4080 Lemon Street, 3<sup>rd</sup> Floor  
Riverside, CA 92501

Attn: Executive Director

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. mail, first class postage prepaid, and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.32 Conflicting Provisions. In the event that provisions of any attached exhibits conflict in any way with the provisions set forth in this Agreement, the language, terms and conditions contained in this Agreement shall control the actions and obligations of the Parties and the interpretation of the Parties' understanding concerning the performance of the Services.

3.33 Amendment or Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.34 Entire Agreement. This Agreement contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings.

3.35 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.36 Provisions Applicable When Federal Department of Transportation Funds Are Involved. Omitted Intentionally

3.37 No Waiver. Failure of Commission to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

**[Signatures on following page]**

**SIGNATURE PAGE  
TO  
PROFESSIONAL SERVICES AGREEMENT**

**IN WITNESS WHEREOF**, this Agreement was executed on the date first written above.

**RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION**

By:

\_\_\_\_\_  
Anne Mayer  
Executive Director

**CONSULTANT**

\_\_\_\_\_  
Printed  
\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

*Approved as to Form:*

By:

\_\_\_\_\_  
Best Best & Krieger LLP  
General Counsel

**MODEL AGREEMENT - EXHIBIT "A"**  
**SCOPE OF SERVICES**

DRAFT

## **Mid County Parkway Project Construction Contract No. 3 Roadway Design from approximately 1 mile east of Rider Street to Warren Road and Bridge Design of the San Jacinto River Bridge (Preparation of Plans, Specifications and Estimates, PS&E) (06/13/2022)**

### **GENERAL ASSUMPTIONS**

This package consists of widening of existing Ramona Expressway from approximately 1 mile east of Rider Street to Warren Road. The road will be widened to provide two lanes in both the east and westbound direction and includes a new bridge over the San Jacinto River for two lanes of traffic in the eastbound direction. The existing San Jacinto River bridge will be used to accommodate the two westbound lanes and no improvements will be made to the existing San Jacinto River bridge. Four traffic signals, including three modifications and one new signal will be included.

The following are general assumptions that apply to the entire scope of work:

- Submittal will be in electronic format submitted via Jacobs File Transfer Site or Project Sharepoint site. No hard copies are anticipated.
- Review of any deliverable will be accomplished with one review cycle, and all responses will be coordinated for concurrence prior to addressing them to make sure the comments are understood and addressed accordingly.
- PS&E submittals will be reviewed in a maximum of thirty (30) working days.
- Design will use Bentley Microstation Connect and OpenRoads software for all design drawings.
- Use ProjectWise to coordinate all design drawings.
- Reports will be reviewed in a maximum of twenty (20) working days.
- Comments will be responded to on plans and reports where the actual comments were made. Jacobs will setup Bluebeam Studio Sessions for all agency reviews.
- Project plans and Special Provisions will be developed based on Riverside County Transportation Department (RCTD) standard specifications and standard plans, the 2018 Caltrans Standard Plans, and 2018 Standard Specifications. Standards will not be changed/updated for the duration of this project.
- Submittals to all agencies will conform to RCTD CADD standards for title block, presentation, scale, content, style, etc. No early design packages are anticipated or included. This will be confirmed during project kick-off meeting and documented in meeting minutes that all agencies are in concurrence with RCTD CADD format. Additional submittals required by other Agencies to conform to their standards are not included unless discussed during project kick-off meeting.
- Design Standards and Design Guidance will not change after the project starts.



## 03 Scope Assumptions

- If any design elements are revised or if new direction is provided after 65%, 90% and 100% PS&E submittal to RCTC and RCTD, such that they affect the design, will necessitate a Request for Change and Amendment.
- The 35% design submittal will be a cursory/over the shoulder review by RCTD. If any of the design elements are revised or if new direction is provided after this submittal, such that they affect the design, may necessitate a Request for Change and Amendment.
- One (1) Health and Safety Plan will be prepared for the project team under this contract.
- Assume RCTD permits will be no fee permits.
- Durations estimated at each phase.:
  - Eighteen (18) months for PS&E phase (assumed start August 2022 thru February 2024)
  - Five (5) months for Bidding and Award phase (March 2024 thru July 2024)
  - Eighteen (18) months for Construction phase (August 2024 thru February 2026)

### TASK ASSUMPTIONS

#### Task 2. Project management, Bid Support and Design Support During Construction

##### Task 2.1 Project Management/Project Administration

- General:
  - One (1) Kickoff Meeting with all Stakeholders, five (5) staff in attendance for two hours, includes preparation of meeting agenda and minute.
  - One (1) Kickoff Meeting with Jacobs Internal Project Team, ten (10) staff in attendance for one hour, includes preparation of meeting agenda and minute.
  - Up to forty-seven (47) Monthly Progress Meetings, assumed to be one hour each, two (2) in attendance. Assume half of the meetings will be virtual and the other half in person.
  - Jacobs team will attend Utility meetings scheduled by RCTC's Utility Consultant, OPC, as needed. It is recommended that utility meetings are scheduled individually with each utility company to discuss conflicts and relocations.
  - Up to four (4) specialty meetings for one hour, and 3 staff in attendance.
  - Up to forty-seven (47) Monthly Invoices and Progress Reports including: a narrative of work performed, areas of concern, actions/approvals needed from RCTC, a schedule assessment and proposed ways to mitigate issues and problems that arise, and recommendations regarding ongoing design work.
  - Up to thirty (30) Change Log Updates to document all recommended, pending, approved and incorporated changes.
  - Up to eighteen (18) monthly schedule updates (thru PS&E only).
  - For the purposes of the PS&E scope of work, eighteen (18) PDT meetings are assumed and up to eighteen (18) monthly meetings with RCTC, meetings will include key personnel for one hour.

## 03 Scope Assumptions

- Project will last a total of forty-seven (47) months that includes eighteen (18) months of design, five (5) months of bidding assistance and award of construction contractor, and eighteen (18) months design services during construction.
- Up to thirty (30) Stakeholder meetings will be required, assuming 5 key personnel in attendance for one hour.
- Constructability review meetings with RCTC Construction Management at the 95% and 100% submittals, assume five (5) meetings with two (2) in attendance for two hours each.

### Task 2.2 Bid Support and Design Support during Construction

- Construction Contract Support:
  - Only one bid period and one contract will be needed for all the PS&E improvements.
  - The Advertising, Award, and Administration will be provided by RCTC. RCTC will be responsible for the preparation of the construction contractor's contract.
- Bid Support:
  - Attend one pre-bid meeting.
  - Provide support information for pre-bid meeting, answer questions, provide addendum
  - Bid period support will occur for 5 months. Management/Administration/Coordination: 5 months x 30 hours/month = 150 hours.
  - Prepare handouts and PowerPoint for Pre-Bid meeting= 20 hours.
  - Answer questions and provide Addenda = 250 hours.
  - We have estimated a level of effort of 420 hours would be required for bidding assistance, as listed in bullets above.
  - Since the exact level of effort cannot be determined at this time Jacobs team will update RCTC each month on expenditures incurred in order to monitor how the anticipated funds are being used and to determine if additional funds will be needed.
- Design Support during Construction:
  - It is difficult or near impossible to predict the Design Support during Construction that will be needed for this project or any project. Therefore, we have set an anticipated maximum number of hours we anticipate that would be needed as follows:
  - Management/Administration/Coordination: 24 months x 15 hours/month = 360 hours.
  - RFI's, Shop Drawings: 40 RFIs/Shop Drawings x 8 hours = 320 hours.
    - Site Visits, meetings with contractor & follow up: 20 site visits x 16 hours = 320 hours. Perform up to 20 site visits consisting of 2 people per visit. Estimated mileage of 120 miles roundtrip.
  - Change Order review requested by RCTC: 6 CCOs x 40 hours = 240 hours.

## 03 Scope Assumptions

- Drawings/information to address unforeseen field conditions: 10 drawings x 20 hours = 200 hours.
- Total estimated level of effort for Design Support during Construction = 1,440 hours
- Since the exact level of effort cannot be determined at this time Jacobs team will update RCTC each month on expenditures incurred in order to monitor how the anticipated funds are being used and to determine if additional funds will be needed.
- Jacobs will not be responsible for any construction inspection.
- Preparation of as-built drawings are included in each individual discipline scope.

### **Task 3. Civil Scope of Work**

#### **Task 3.1 General Civil Design Requirements**

- Design Standards and Format of Design Documents
  - See General Assumptions.

#### **Task 3.2 Survey Work (Coast Surveying)**

- General:
  - All surveys will be performed based on the same control utilized by Caltrans for the existing Topographic Surveys provided.
  - All control points utilized for this survey will be included and a Project Control Map provided.
  - A Record of Survey will not be provided.
  - Right of Way and Legal Descriptions will not be provided.
  - Post-construction monument perpetuation will be the responsibility of the Construction Contractor's Professional Land Surveyor.
- Topographic Site Surveys:
  - Topographic survey will be tied in to the horizontal and vertical control.
  - Survey coordinates will be provided at all tie-in locations.
  - Additional Topographic mapping at the SJ River bridge to include 2000' both east and west of existing bridge, and one mile upstream and downstream to be tied to the horizontal and vertical control.
  - Field Survey of the San Jacinto River bridge both upstream, downstream and under the bridge.
  - Cross Sections every 100' for one mile north and south of existing San Jacinto River bridge to be used for the hydraulic analysis.
- Aerial Mapping:
  - Aerial targets will be provided to tie aerial mapping into survey control.

## 03 Scope Assumptions

- An overall aerial mapping, image, and survey will be provided for the project and will include the larger area at the San Jacinto River.

### Task 3.3 Roadway Assumptions

- General:
  - Hold internal weekly meetings with all disciplines throughout the project to coordinate the work.
  - Use ProjectWise to coordinate all design and drawing files.
  - Coordinate with design team on new concepts and innovations.
  - Review all existing project documentation.
  - Gather all As-Built plans, organize and post on server.
  - Obtain the necessary permits for the project to go to construction. Estimated cost of permits has been included and will be expensed out to the project.
  - Coordination and interaction with RCTC consultant, OPC, on utility impacts.
  - Preparation of the existing utility base file which will include size, owner, offset, etc. Jacobs team will not be liable for any information related to the utility data/information provided by others. Existing utility base file will be based upon as-built information provided by each utility owner and supplemented by visual survey of above-ground utilities (e.g. poles, pedestals, vaults) and any required potholing necessary to establish the horizontal and vertical location of underground utilities.
  - Provide support to the Utility Coordination in the preparation of the following:
    - Preparation of the letter to utility owners.
    - Preparation of the utility conflict matrix.
  - Coordinate with RCTC consultant, OPC, to get the relocation plans from each utility company.
  - Preparation of Pothole drawings for utilities in potential conflict with the proposed improvements.
  - Preparation of site-specific traffic control plans for the Geotechnical borings.
  - Title, Key Map and Line Index to be included with 35%, 60%, 95%, and 100% submittals.
    - Up to 3 sheets will be required.
  - Typical Cross Sections to be included with 35%, 65%, 90%, and 100% submittals.
    - Up to 5 sheets will be required.
  - Layouts and Profiles will be combined into the same plan sheet and prepared at 40 scale with 35%, 65%, 90%, and 100% submittals.

## 03 Scope Assumptions

- Up to 45 Sheets will be required.
    - Profiles will be on top of layout sheets and will include centerline, sawcut line and edge of pavement line.
    - Utility plans will be included on layouts and submitted with 60%, 95%, and 100% submittals.
  - Construction Details and ADL Plans to be included with 65%, 90%, and 100% submittals.
    - Up to 70 Sheets will be required.
  - Stage Construction Plans and Details to be included with 65%, 90%, and 100% submittals.
    - Up to 100 Sheets will be required.
  - Detour, Construction Area Sign, Pavement Delineation and Signing Plans, and Details to be included with 65%, 90%, and 100% submittals.
    - Up to 85 Sheets will be required.
  - Right of Way Mapping (Right of Way Requirement Sheets).
    - Up to 45 Sheets will be required.
  - General – Transportation Management Plan
    - Preparation of the Transportation Management Plan (TMP) for PS&E phase.
    - Interpretation from previous traffic analysis will be performed and applied to this project.
    - Provide team with adequate roadway lanes for existing traffic as well as construction work areas and staging areas.
  - Water Pollution Control Plans are not included.
  - Coordination with RCTC and/or RCTD for right of entry prior to performing field work necessary for survey, geotechnical, and site assessment.
  - No design exception documentation anticipated. Design approach and methodology will be discussed and agreed upon prior to the completion of project.
  - No quantity sheets will be prepared.
- Field Visits:
    - Field visit to identify existing utilities: Up to 4 visits of 2 people per visit. Estimated mileage of 120 miles roundtrip.
    - Field visits for roadway design: Up to 8 visits of 3 people per visit. Estimated mileage of 120 miles roundtrip.
    - Field visit for traffic design: Up to 4 visits of 2 people per visit. Estimated mileage of 120 miles roundtrip.

## 03 Scope Assumptions

- Roadway PS&E Reviews (35%, 65%, 90%, 100%):
  - Reviews will be done by RCTD, and RCTC.
  - One review cycle per submittal will occur.
  - All comments will be received at the end of the comment review period.
  - One comment resolution meeting will be held to resolve any conflicting comments.

### Task 3.4 Wildlife Crossing (Contech)

- General:
  - Contech will prepare LRFD engineering calculations and details for the CON/SPAN O-series Precast arch foundation design. Foundation design will be in accordance with recommendations from the project geotechnical report. Geotechnical report will need to provide parameters for LRFD design.
  - Prepare LRFD construction (design) drawings for the CON/SPAN O-series Precast arch design in accordance with the drawings and information provided by Jacobs.
  - Prepare LRFD Precast or Keysteel Wall engineering calculations and details. Walls will be designed for local stability only; global stability analysis to be performed by others.

### Task 3.5 Drainage Assumptions

- General
  - Available hydrologic data – design flow information for local storm drains will be provided by RCFC&WCD or local agency within a reasonable time upon request, e.g. one week.
  - County maintenance crew to maintain all culverts in advance of the video logging to be sure blocked pipes are unblocked and accessible for video logging work.
  - Video logging of the existing culverts, up to 18, and cleanout of each culvert prior to the video logging to properly assess the condition of each system.
  - Drainage Plans
    - Up to 45 Sheets will be required.
  - Drainage Profiles
    - Up to 45 Sheets will be required.
  - Drainage Details
    - Up to 63 Sheets will be required.
  - Drainage Report
    - Riverside County Hydrology Manual is basis for hydrologic analysis
    - Storm drain hydraulic analysis will be developed using HY-8, FlowMaster, or other similar software. Where needed, detailed hydraulic analysis will be performed using WSPGW.

## 03 Scope Assumptions

- Infiltration Testing for stormwater treatment will be performed according to the scope identified below for Task 3.6 Geotechnical work.
- Bridge Hydraulics
  - Design flow information for San Jacinto River will be provided by RCFC&WCD within a reasonable time upon request, e.g. one week. No new hydrologic analysis is expected to be required and is excluded from this work.
  - A letter of map revision (LOMR) for FEMA floodplain mapping is not expected to be needed and is not included.
  - HEC-RAS (one-dimensional) will be used to evaluate the project impacts. Two-dimensional hydraulic analysis, if deemed to be required, will be scoped separately by Amendment. Up to two alternative layouts will be evaluated.
- Bridge Type Selection:
  - The Draft Bridge Hydraulics Report would be submitted with the Bridge Type Selection
- Final Bridge Design Phase
  - Final Bridge Hydraulics Report, to be included with final bridge structure submittal.
- 35% Design:
  - The Drainage and Stormwater deliverables at this design phase will include the following:
    - Drainage Plans showing the conceptual layout of drainage systems.
    - Drainage profiles for cross drainage systems
    - Draft Drainage Details relevant to the cross-drainage systems
    - Draft Drainage Report, summarizing the analysis of cross drainage systems
    - Draft Bridge Hydraulics Report to be submitted with the Bridge Type Selection
- 65% Design
  - The Drainage and Stormwater deliverables at this design phase will include the following:
    - Drainage Plans, Profiles, and Details for all storm drainage systems
    - Draft Drainage Report
    - Draft Water Quality Management Plan.
- 90% Design:
  - The Draft and Stormwater Deliverables at this design phase will include the following:
    - Drainage Plans, Profiles, Details, and Quantities for all storm drainage systems
    - Draft Final Drainage Report
    - Draft Final Water Quality Management Plan

## 03 Scope Assumptions

- Final Bridge Hydraulics Report, to be included with final bridge structure submittal.
- 100% Design:
  - The Draft and Stormwater Deliverables at this design phase will include the following:
    - Final Drainage Plans, Profiles, Details, and Quantities for all storm drainage systems
    - Final Drainage Report
    - Final Water Quality Management Plan
- Bid Support Services:
  - Up to 4 bid inquiries are anticipated, requiring up to 16 hrs each.
  - Plan revisions will be scoped separately.
- Services During Construction/As-Built:
  - Up to 20 drainage related submittals will be reviewed.
  - Up to 40 drainage RFI's will be addressed, requiring up to one site visit with two staff, and up to 12 hours for each RFI.
  - Drainage staff will attend construction site meetings, if needed, after a formal RFI is submitted.

### Exclusions:

- With geometric refinements to the vertical profile, a pump station is not expected to be needed and is not included. Pump station engineering and design, including detention storage design, are not included. If a pump station is determined to be necessary, this work will be scoped separately as an amendment.
- Early design submittals/early design packages.
- CLOMR/LOMR
- Detention Basin engineering and design
- Storm Water Data Report and Water Pollution Control Plans

### Task 3.6 Geotechnical Assumptions

- General:
  - Geotechnical studies for extension of up to 8 existing drainage structures – culverts.
  - One new roadway bridge structure: San Jacinto River Bridge (10 span)
  - Geotechnical studies for one wildlife overcrossing.
  - No sound walls.
  - No retaining walls.



## 03 Scope Assumptions

- No sign structures or high-mast lighting.
- Geotechnical studies for site grading: includes embankment cuts and fills up to 12 feet.
- Geotechnical studies for new BMP sites
- Geotechnical studies for new pavement
- No pavement rehabilitation studies for existing pavements.
- Pre-field Activities/exploration:
  - Review available and pertinent geotechnical and geology literature and perform a site reconnaissance survey to identify potential field exploration locations and site constraints as related to our proposed scope of work.
  - Obtain right of entry/encroachment permits prior to drilling and sampling activities. A list of permits for various project station segments are identified in Table 1.

**Table 1 – Permits**

Location	Right of Entry/ Encroachment Permits
Future Antelope Road to Warren Road	Riverside County
San Jacinto River Bridge	Riverside County Flood Control District and/or USACE

- Utility Clearance: Review available project utility plans, stake and mark field exploration locations, and contact Underground Service Alert (USA) at least 48 hours prior to our scheduled drilling for utility clearance. Should utility conflicts arise, impacted locations will be re-located as close as possible to their originally planned location.
  - Health and Safety Plan: All site personnel will be responsible to follow Jacob's safety policies. Geotechnical scope-specific Health and Safety Plan will be prepared.
- Field Exploration and Laboratory Testing: Proposed field exploration consists of performing borings and infiltration testing.
- Borings: Up to forty-five (45) borings are assumed for the project. Summary of proposed borings and anticipated depth are presented in Table 2.
- Borings: Up to thirteen (13) borings are assumed for the bridge structure. Summary of proposed borings and anticipated depth are presented in Table 2. Proposed borings will be drilled to the planned depth or refusal whichever is shallower.

## 03 Scope Assumptions

**Table 2 – Summary of Borings and Test Pits**

Type	Number of Borings	Anticipated Boring Depth (feet)
Hollow-Stem Auger Borings (Baseline Embankment Fill Areas, Drainage Culverts/RCPs and Pavement)	45	10 to 20*
Wildlife Overcrossing	2	60
Rotary Wash	13	100

\* 20 feet deep borings are planned at 8 existing drainage structure extensions

- The borings will be geotechnically logged and sampled in accordance with Caltrans Soil and Rock Logging Manual. Laboratory testing will be performed on select soil samples for soil classification, strength characteristics, expansive and corrosion evaluation. At the end of drilling, each boring will be backfilled with cement grout.
- Log of test borings (LOTBs) will not be prepared for the borings drilled for pavement and drainage structure design.
- LOTBs will be prepared in accordance with Caltrans Soil and Rock Logging Manual for the borings drilled for the wildlife overcrossing.
- Upon completion of field exploration and laboratory testing, LOTBs will be prepared in accordance with Caltrans Soil and Rock Logging Manual for the borings drilled for the San Jacinto River Bridge.
- Geotechnical Analysis: Perform geotechnical analysis using site-specific geotechnical data obtained from the field exploration in general accordance with Caltrans Geotechnical Manual, and AASHTO LRFD Bridge Design Specifications. Geotechnical evaluations would generally include pavement design, culvert design, shallow foundations (for the wildlife overcrossing), deep foundation (for the bridge structure), collapse and expansion potential, corrosion potential and construction considerations.
- Site specific acceleration response spectrum will be developed per Caltrans Seismic Design Criteria.
- Geotechnical Deliverables: Following geotechnical deliverables will be prepared in accordance with Caltrans Geotechnical Manual:
  - Preliminary, draft and final Foundation Report (PFR and FR) for the wildlife overcrossing.
  - Preliminary, draft and final Geotechnical Design Report (PGDR and GDR) for the project alignment.
  - Log of Test Borings (LOTBs)
  - Preliminary, draft and final Foundation Report (PFR and FR) for the bridge structure.

## 03 Scope Assumptions

- Infiltration Testing:
  - Perform double-ring infiltrometer test per ASTM D 3385 at up to 35 locations selected by the drainage team.
  - Pre-field Activities:
    - Prior to field exploration, we will perform site-reconnaissance survey to identify potential field exploration locations and site constraints as related to our proposed scope of work.
    - Stake and mark our field exploration locations and notify Underground Service Alert a minimum of 48 hrs prior to field work exploration.
    - Perform one soil sample testing in the vicinity of the double-ring infiltrometer test location to reasonably identify subsurface soil conditions.
    - Soil sampling will be obtained either by hand digging or by using hand auger at an approximate depth of 2 feet below ground surface.
  - Laboratory Testing
    - After soil sampling, laboratory testing will be performed on select near surface soil samples. Our proposed laboratory testing consists of:
      - a. Particle-size distribution (gradation) of soils using sieve analysis (ASTM D 6913)
      - b. Atterberg limits (ASTM D 4318)
  - Infiltration Testing Report
    - The data obtained from the infiltration and laboratory testing will be evaluated and analyzed to develop infiltration rate at each tested location.
    - An infiltration test report will be prepared documenting the results of the double-ring infiltration testing.
    - Report will include soil type, laboratory test results, double-ring infiltration test methodology, and test results.
- Additional geotechnical assumptions:
  - Day time drilling is proposed for 100% of the field work.
  - Prevailing wages are applied per contract requirements.
  - Soil cuttings drummed and removed from site with normal (non-hazardous waste) disposal.
  - No groundwater monitoring wells are installed.
  - Access to the required explorations areas will be granted in a timely manner.
  - Fees for encroachment permits for geotechnical exploration will either be waived or will be paid by RCTC.

## 03 Scope Assumptions

- Permit to drill within the Riverside County Flood Control District and/or USACE jurisdiction for the bridge structure will be obtained by the Jacobs environmental team.
- Drilling locations can be accessed using a conventional drill rig.
- No traffic control services will be required for drilling on the bridge structure. Bridge borings will be performed away from Ramona Expressway, within the proposed support location footprints.
- Up to thirteen (13) rotary wash borings totaling up to 1,300 linear feet are proposed for the bridge structure.
- Boring locations (13) will be cleared for utilities before drilling by third party utility locating company.
- Up to ten (10) days of daytime traffic control services in accordance with site-specific traffic control plans are considered for drilling on Ramona Expressway.
- Up to forty-five (45) hollow-stem auger borings totaling up to 530 linear feet are proposed for the project.
- Up to two (2) hollow-stem auger borings totaling up to 120 linear feet are proposed for the wildlife overcrossing.
- Boring locations (47) will be cleared for utilities before drilling by third party utility locating company.
- Log of test borings will not be prepared for the borings drilled for pavement and drainage structure design.
- Log of test borings will be prepared for the borings drilled for the wildlife overcrossing and San Jacinto River bridge.
- For borings penetrating existing pavements, the surface will be capped with asphalt or rapid set concrete.
- Pavement structural design discussion and recommendations will be included within the Geotechnical Design Report deliverables. No Materials Report will be prepared for the project.
- Environmental contaminants or hazardous materials are not anticipated to be encountered during the investigation. Should such materials be encountered, operations will be halted immediately at the suspect location, and RCTC will be contacted for additional direction. Drilling may proceed when appropriate protective measures are in place.
- Jacobs will coordinate with applicable utility staff for utility clearances. Coordination with Underground Services Alert (USA) and associated firms marking utilities for USA is also included. Jacobs is not liable for any damages attributable to errors made in marking of utility locations by others.
- As-built utility and drainage plans will be provided by others to aid in clearing the drill sites.

## 03 Scope Assumptions

- The existing MWD protection structure (tunnel) is adequate for the proposed roadway widening.
- Geotechnical construction support services are provided in the first two years of construction.
  - Geotechnical construction support services include review of geotechnical material submittals, deep foundation installation related documents (for the bridge structure alternative), and response to request for information for 8 hours per week for first two (2) years of construction.

### Exclusions:

- Geotechnical observation services such as for subgrade preparation and embankment placement during construction are not included in the scope of work.
- Geotechnical observation services such as foundation construction for the bridge structure are not included in the scope of work.
- Soils and materials testing is not included in the geotechnical construction support services.
- Handling of any potentially contaminated material or the level-of-effort required for additional protective measures.
- Density testing of fill and backfill.
- Geotechnical field investigation, design, and reporting for potential MWD aqueduct protection structure not included.
- Evaluation of existing bridge foundation capacities and seismic retrofit recommendations not included.

### Task 3.7 Structures Assumptions

- General:
  - The Jacobs team will prepare structure design based on AASHTO LRFD Bridge Design Specifications, 2017, Eighth Edition, with Caltrans Amendments (AASHTO-CA-BDS-6), various Caltrans Bridge Design and Detail Manuals, and Caltrans Seismic Design Criteria, Version 2.0.
  - Structure Construction will be based on the 2018 Caltrans Standard Plans and Specifications.
  - This scope of services is based on one new bridge design.
  - The bridge will be single stage construction.
  - There are no bridge mounted signs.
  - Use Project Wise to coordinate all design drawings.
  - Barrier will be provided on the structure.
  - Large diameter utilities, greater than 4" in diameter, are not anticipated in the bridge. Future utility openings and conduits in the barriers will be provided on the structure.

## 03 Scope Assumptions

- The geotechnical team will develop the LOTB sheets. Only minor markups and border modifications will be performed by the structures team.
- Deck drainage calculations will be performed by the drainage team and will be included in the bridge design calculation binders for reference.
- Caltrans XS sheets will be used and modified, as needed.
- San Jacinto River Bridge is assumed to be a CIP/PT Concrete box girder structure supported on column bents and footings on CIDH large diameter shafts.
- The supports for each structure will be skewed to accommodate the future widened condition.
- All aesthetic details and requirements for the structure will be coordinated and developed outside of the structures scope.
- Architectural treatment on the bridges is to be limited to form liner on the barriers and wingwalls. Patterns to be determined by others.
- Retaining walls and sound walls are not included.
- Non-standard overhead signs are excluded from the structures fee. Caltrans reference sheets will be used for all OH sign design.
- Miscellaneous structure support does not include design calculations. It includes coordination, attending meetings, and providing reviews of plans or details for other disciplines.
- 35% Bridge Type Selection:
  - Preliminary bridge design in 35% design level including performing preliminary structural design and seismic analyses in accordance with Caltrans Bridge Design Standards will be performed based on the approved roadway geometric design plans for the preferred alternative
  - The preliminary structure study will be summarized in a Bridge Type Selection Report, which will include discussion on the structure, falsework (if required), utility relocation, stage construction, constructability-related topics, calculated scour depth, and geotechnical evaluation.
  - The 35% bridge type selection design will include a bridge general plan, a preliminary foundation plan, a general plan estimate and other pertinent information needed to determine the proper structure type.
  - The Type Selection Report will be submitted to the County for review and concurrence.
  - Only one Type Selection meeting will be required.
  - The structure deliverables at this design phase will include the following:
    - Bridge Type Selection Report

## 03 Scope Assumptions

- 65% Unchecked Structure Plans
  - Upon the acceptance of the Final Type Selection Report, engineering conclusions for the preferred structure alternative identified in the final bridge type selection report will be carried into the final design phase.
  - The structure deliverables at this design phase will include the following:
    - 65% Unchecked Structure Plans, including but not limited to (General Plan, Index to Plans, Deck Contours, Foundation Plan, Abutment Layout, Abutment Details, Bent Layout, Bent Details, Typical Section, Prestressing Details, Girder Details, Hinge Details, Structure Approach and Drainage Details, Aesthetic Details)
- Bridge Design Independent Check
  - 65% unchecked bridge plans will be independently checked by a separate licensed bridge engineer, who has not been involved in the project.
  - A separate set of structural design check calculations including quantity calculations will be prepared in accordance with Caltrans bridge design practice.
  - The independent checker will review the plans for completeness, consistency, and correctness of references.
  - All comments will be reconciled, and responses will be documented in the project files.
  - The structure deliverables at this design phase will include the following:
    - Bridge Design Independent Check Calculations
    - Quantity Independent Check Calculations
    - Comment/Response
- 95% Structure Plans, Specifications and Estimate:
  - Responses to all agencies' review comments for the 65% submittal will be prepared and included in this submittal.
  - Caltrans Standard Special Provisions (SSP) for structural work not covered by the Caltrans Standard Specifications and Revised Standard Specifications will be prepared and included in this submittal.
  - Caltrans standard item codes for bid items will be used when feasible in the development of the bid schedule.
  - The Contract Cost Data Book published by Caltrans will be used to adjust the item unit prices.
  - 65% plans will be updated to reflect the reconciliation of the independent checker's comments.
  - The structure deliverables at this design phase will include the following:
    - 95% Structure Plans

## 03 Scope Assumptions

- Edited Caltrans Standard Special Provisions
- Bridge Design Calculations
- Quantity Calculations
- Cost Estimate
- Final 100% Plans and Contract Bid Documents:
  - Responses to the County's review comments for the 95% submittal will be prepared and included in this submittal.
  - Any additional comments received on the 100% submittal are follow up to previous comments and are not new comments requesting preference-based changes.
  - The structure deliverables at this design phase will include the following:
    - Final signed structure plans (included with the Roadway Package)
    - Final Specifications (included with the Roadway Package)
    - Final Estimate (included with the Roadway Package)
    - RE Pending File (included with the Roadway Package)
- Services During Construction/As-Builts:
  - All temporary structures or shoring design or review is excluded from the scope.
  - All design, detailing or review of erection equipment, formwork, falsework, or temporary erection supports is excluded from the scope.
  - Up to 2 people attending the preconstruction meeting.
  - Excludes contract analysis, structure bid analysis and square foot cost analysis.
  - Markups for as-builts will be provided to the design team at the end of construction. Effort for as-builts up to 3 hours per sheet.
  - Project close-out is handled by others.
  - Provide all electronic files to RCTC upon completion of as-builts

### Task 3.8 Traffic Signal/Electrical (FPL & Associates)

- General:
  - Design will include four (4) traffic signal plans, 3 modified and one new signal. The locations are:
    - Ramona Expressway & Lakeview Avenue (modification)
    - Ramona Expressway & Hansen Ave/Davis Road (modification)
    - Ramona Expressway & Bridge Street (to be constructed by the County prior to project) (modification)



## 03 Scope Assumptions

- A new traffic signal at a location to be determined.
- Traffic signal design will include the addition of Proxim wireless radio equipment per specifications provided by the County.
- Conduct field investigation, prepare the signal design based on the intersection geometry provided by Jacobs, coordinate with the power agency to secure the electricity source to energize the one new signal, attend weekly coordination meetings, PDT meetings, and provide construction support to complete the construction of the four signals.
- FPL will attend fifty-two (52) weekly coordination meetings; each will take half hour. Additionally, there will be eighteen (18) PDT meetings. FPL will attend one hour at each PDT meeting when traffic signal design issue is being discussed. Assume all meetings are virtual.
- FPL will conduct a field review of the existing conditions to supplement the record drawings provided by Jacobs and to identify the electrical service points.
- FPL will prepare three (3) traffic signal modification plans and one (1) new traffic signal plan. The specific signal phasing (i.e. whether to provide protected left-turn phasing) will be determined through the discussion in the PDT meetings and with the County of Riverside. Safety lighting will be provided at each of these intersections.
- The traffic signal plan shall be prepared at a scale of 1-inch equals 20 feet.
- The traffic signal design will be in conformance with the County of Riverside Traffic Signal Specifications and Standards, Caltrans Standard Plans and Specifications dated 2018, and the latest California Manual on Uniform Traffic Control Devices (CAMUTCD).
- Assume that standard Caltrans poles, foundations, and appurtenant equipment will be utilized. We will verify with the County if any County-specific equipment will be required.
- Will coordinate with the County to clarify whether the following associated upgrades will be requested and will update plans accordingly:
  - Replacement of existing pedestrian push buttons to be in compliance with ADA and CA-MUTCD requirements.
  - Installation of bicycle lane detection.
  - Installation of video detection.
- Assume that the existing controller cabinet and controller will need to be upgraded/replaced.
- Assume that the existing service cabinets at the 3 existing locations will remain as existing, unless impacted by the project. A new service cabinet will be proposed for the new signalized intersection.
- SCE coordination will be needed for the new traffic signal which requires a new electrical service. FPL will provide a set of traffic signal plans to SCE to request their assistance in verifying overhead clearances to existing SCE facilities.
- FPL will prepare three (3) temporary traffic signal plans (one (1) for each existing signalized location). The temporary traffic signal design will accommodate the planned construction

## 03 Scope Assumptions

activities at the intersection and assumes only one (1) stage of construction that will require the installation of a temporary traffic signal.

- Should any additional stages be required, FPL is allowed additional compensation (to be separately negotiated) if requested to prepare additional temporary traffic signal design plans.
- The temporary traffic signal plans will be prepared at a scale of 1-inch equals 20 feet.
- The traffic signal design will be in conformance with the Caltrans Standard Plans and Specifications dated 2018, and the latest California Manual on Uniform Traffic Control Devices (CAMUTCD).
- We assume that standard Caltrans temporary equipment will be utilized. We will verify with the County if any County-specific equipment will be required.
- Should the existing controller cabinet and/or service cabinet be impacted, the temporary traffic signal design will propose a temporary installation at an alternate location within the respective intersection.
- FPL will coordinate with the serving utility company to coordinate obtaining electrical service for the new traffic signal location. It is assumed that the services for the three existing locations will not be impacted.
- We will prepare Specifications in the County of Riverside format. We assume that County will provide sample Specifications.
- A preliminary engineer's cost estimate will be prepared with the second submittal of the plans. A revised engineer's cost estimate will be included with the final submittal.
- Construction Support includes time for 8 RFI's at 3 hours each, 4 submittal reviews at 6 hrs each, and preparation of as-builts for 24 hrs. A total of 72 hrs is estimated for construction support services.

### Assumptions:

- Jacobs will furnish the intersection geometry (civil engineering), the striping design information, and all existing and proposed utility information in CAD to FPL at the kick off meeting to start FPL's signal design.
- FPL's fee proposal is based on the Jacobs information to prepare the signal design information. If the intersection geometry and the striping information is changed during the course of the design, FPL is entitled to a change order.
- FPL will coordinate with the power agency to apply a new electrical service for the new signal and confirm the electrical service for the three existing signals.
- It is assumed that the existing traffic signal electrical service points will not be impacted.
- All meetings are virtual. Scope and fee does not include time for driving to and from meetings.
- The signal as built plans will be prepared based the contractor's notes. FPL will not conduct the field as-building after traffic signals are built.
- Assume all traffic signal phasing has been determined by the agency and will be shared with FPL.

## 03 Scope Assumptions

- Assume Jacobs will initiate a pre-design meeting with the agency during which FPL will ask for design input and parameters.
- Jacobs to provide as-built plans to FPL, including existing traffic signals.

### Exclusions:

- Design of traffic signal interconnect and fiber cables.
- Signal warrant analysis.
- Design of street/highway lighting, permanent or existing, other than safety lighting at the four signalized intersections.

### Task 3.9 Traffic Analysis (VRPA)

- General
  - Traffic analysis will be conducted to provide support for the design process. It will include the following information:
    - Existing traffic counts
    - Existing traffic analysis
    - Future traffic forecasts
    - Roadway capacity analysis
    - Recommendations for lane geometry, turn pocket length, and other features related to the design of the project
  - The data and analysis conducted for the traffic analysis will be available if any questions related to noise or air quality come up during the course of the project.
  - The traffic analysis will be conducted using the methodologies used for the Mid County Parkway EIR/EIS traffic analysis, except for cases where updates need to be made to reflect current standards. The following scenarios will be analyzed:
    - Existing Conditions
    - Horizon Year – With Project
  - This scope of work assumes that the traffic forecasts will be based on the results of the Mid County Parkway EIR/EIS and other more recent traffic analyses conducted in the area. No new traffic model runs are assumed.

### Exclusions:

- New traffic model runs.

### Task 3.10 Erosion Control (Tatsumi)

- General
  - Participate in PDT meetings virtually

## 03 Scope Assumptions

- Receive and review the existing and approved Project Approval and Environmental Document. Incorporating all appropriate elements.
- Conduct a site visit to review the existing site conditions.
- PS&E submittals are limited to one submittal of 35%, 60%, 95%, 100%, and final contract documents. Additional submittals will be considered new work and an additional fee.
- Design Plans
  - Prepare Hydroseed/Erosion Control Plans
    - Specifications
    - Cost Estimate
    - QA/QC reviews at each submittal
- Construction Bid/Support/Closeout
  - Attend one pre-bid meeting
  - Respond to Bidders/Requests for Information (RFIs) up to 1 RFI.
  - Review a maximum of 1 product submittal/shop drawing
  - Prepare as-built drawings utilizing redlines provided by the contractor.

### Exclusions:

- Irrigation plans are not included in this scope of work.
- Addressing surface water runoff in the landscape is not included.

### Task 3.11 Technical Specifications and Special Provisions

- General
  - Specifications will be submitted with 65%, 90% and 100% submittals.
  - Special provisions will not be submitted as part of the 35% submittal.
  - Special provisions submitted at 65% will contain list of Standard Plans and sections relevant to 65% design.
  - Special provisions with complete section edits will be provided as part of the 90%, and 100% submittals.
- Deliverables:
  - Electronic submittals for 65%, 90%, and 100% submittals in word document and PDF formats.

## 03 Scope Assumptions

### Task 3.12 Aerially Deposited Lead (ADL) Site Investigations and Plans

- General
  - This will include up to 40 locations to be sampled for ADL at four depths (0.5 ft, 1.5 ft, 3 ft, and 4 ft) using hand auguring methods. All samples will be collected in unpaved areas where soil excavation/disturbance is planned. The sample spacing required for adequate characterization is assumed to be half a mile. Laboratory testing for lead will use EPA Method 6010. All samples will be tested for total threshold limit concentrations (TTL). Up to 50% of samples will require soluble threshold limit concentration (STLC) using waste extraction test (WET) (citrate) extraction. Up to 25% of samples will require de-ionized water waste extraction (DI-WET) analysis. Up to 25% of samples will require toxicity characteristic leaching procedure (TCLP) analysis. One report will be prepared to summarize the findings for the ADL investigation.
  - Submittal to include a Draft and Final Work Plan for ADL Investigation, and a Draft and Final Investigation Report.
- Assumptions:
  - Additional samples required for reduced spacing are not included.
  - A total of two submittals for this document (Draft and Final) will be prepared and submitted for review and approval. No additional submittals will be made unless additional review(s) are due to quality of the deliverables.
  - RCTC will provide or arrange for all right of entry to restricted site access.
  - A reduction in boring samples from the Caltrans guidelines has been made and must be verified prior to initiation of work.

### Task 3.13 Initial Site Assessment for Hazardous Waste

- General
  - Hazardous Waste Initial Site Assessment (ISA) will be prepared for the 8.5-mile Project where excavation, structure demolition or modification is planned to determine whether construction of the proposed project could be affected by any recorded or visible hazardous waste problems, and to recommend any additional work that may be needed
  - The project scope will include an electronic search of governmental databases, a site reconnaissance of the 8.5-mile corridor, and reviews of historical aerial photographs and topographic maps.
  - This ISA will be prepared in accordance with the guidelines provided in the Caltrans Project Development Procedures Manual (PDPM) Online Edition, Chapter 9: August 11, 2017, and generally in accordance with the American Society for testing and Materials (ASTM) Standard E 1527-13.

## 03 Scope Assumptions

- Assumptions:
  - RCTC will provide or arrange for all right of entry to restricted site access.
  - No property acquisitions are included as part of the Project, and therefore, a review of Chain-of-Title reports, environmental liens, or activity and use limitations (AULs) will not be performed.
  - The ISA Site reconnaissance visit will include one round-trip to/from the Project site and can be completed in a total of 10 hours by one Jacobs staff.
  - The ISA will include a completed Caltrans Metric ISA Checklist for the Project.
  - The ISA does not include an assessment for radon, lead-based paints, lead in drinking water, molds and mildews, indoor air quality, cultural and historic resources, ecological resources, industrial hygiene, health and safety, and other ASTM Standard non-scope considerations.
  - We assume that the cost of copies of regulatory agency files will not exceed \$100.
  - We assume that records for the Site and adjoining properties of concern will be available through either on-line agency sources (e.g., State Water Resources Control Board GeoTracker™) or at one in-person location (local Certified Unified Program Agency). We assume one visit, including round-trip travel, to review in-person agency records and the review can be completed within 8 hours.
  - Jacobs assumes one round of comments by RCTC and two by Caltrans. Responses to comments will be prepared for RCTC and Caltrans comments. One electronic copy (PDF) of each of the draft version will be submitted. The final report will be provided by e-mail or Jacobs' secure file transfer protocol (FTP) site.
  - Attendance at any meetings, additional requirements due to changes or interpretations in regulations by the agencies, or supplemental letters will be provided at additional cost.
  - The ISA and resulting report will not be materially relied upon for property transfer, transaction, or development purposes.

### Task 3.14 Environmental Compliance/Permits (LSA)

- General:
  - Preparation of revalidation and permits will begin at 95% PS&E design.
- Project Management/Administration/Coordination
  - This task includes virtual attendance at 18 Project Development Team (PDT) meetings by the LSA Principal in Charge or Project Manager.
  - As requested by RCTC and Jacobs, LSA will take the lead in coordinating directly with Caltrans Environmental staff.
- Preconstruction Biological Surveys for Geotechnical Borings (LSA Task 4.1)
  - Nesting Bird Survey/Vegetation Removal Seasonal Constraints

## 03 Scope Assumptions

- This scope includes 5 days of preconstruction nesting bird surveys in the event that geotechnical boring activities result in vegetation removal during restricted timeframes.
- Geotechnical boring locations and access routes will be pre-defined.
- No vegetation removal can occur within Public/Quasi-Public (PQP) land or Criteria Area within the nesting season (March 1-June 30).
- Geotechnical Boring Regulatory Permits and Coordination (LSA Task 4.2)
  - During the 35% design phase, LSA will coordinate with RCTC and Jacobs to acquire, as needed, the regulatory permits listed for geotechnical borings of the proposed project:
    - Geotechnical Boring Regulatory Permit Fees.
- Regulatory Agency Permits for Construction (LSA Task 6.1)
  - This scope of work assumes that one permit application will be submitted simultaneously to each of the three regulatory agencies (USACE, RWQCB, and CDFW).
  - Existing JD is adequate for all permit applications and regulatory environment does not change.
  - LSA will set up a pre-application meeting with the United States Army Corps of Engineers (USACE) before beginning the application process.
  - During final design, LSA will acquire, as needed, the regulatory permits listed for construction of the proposed project:
    - Permit Fees for Project Construction.
- Environmental Revalidation and Supplemental Technical studies (LSA Task 6.2)
  - LSA will complete an Environmental Revalidation form for Caltrans (NEPA) and RCTC (CEQA) approval to document any modifications made to the design that differ from the design in the Final EIR/EIS. Effort scoped under this task is anticipated to begin during the 95% design phase.
  - To support the Environmental Revalidation, LSA will prepare a brief write-up on each environmental topical area from the Final EIR/EIS.
  - If it is determined that any proposed design modifications would result in new potentially significant impacts that require new mitigation measures, then a supplemental EIR/EIS would be required. This scope of work does not include preparation of a supplemental environmental document.
  - This scope includes up to three rounds of review and responses to comments from RCTC and Caltrans District 8. If additional rounds require response or substantive issues develop requiring any effort beyond the scope of work (and estimate), a contract modification will be necessary, and a schedule adjustment may also be needed.
  - During 100% design, LSA will coordinate with RCTC and Caltrans to execute Environmental Certification at the Ready-to-List milestone.
  - Section 508 document remediation is not included in this scope of work.

## 03 Scope Assumptions

- The following supplemental technical studies, or additional CEQA/NEPA documentation, are anticipated at this time.
  - Supplemental Air Quality Analysis
    - This scope assumes the preparation of a quantitative PM<sub>10</sub> and PM<sub>2.5</sub> Hot-Spot assessment would not be required.
  - Cultural Resources
    - LSA will develop a revised Area of Potential Effects (APE) map on a base map provided by Jacobs. The APE map will depict the existing topography; grading limits; borrow and staging areas; temporary construction easements; existing and proposed right-of-way; existing and proposed roadway geometrics; parcel boundaries and numbers, as needed; evaluated buildings and structures; a scale in U.S. Customary Units; a north arrow; sound and/or retaining walls, if any; conceptual Best Management Practices (BMPs); the APE boundary; a signature block; a legend; and all other Caltrans format requirements per the SER (January 2011). Per Caltrans, the map will be at scale of 1 inch = 200–400 ft (a scale of 1 inch = 200 ft is preferable). The map identifies the entire area of project impacts.
    - This proposal provides budget to prepare an APE map based on the first set of complete engineering plans provided by Jacobs. In the event engineering plans change, a contract modification (budget augment) will be necessary. This map will be submitted to Caltrans with the SHPSR for approval and signatures.
  - Native American Consultation
    - Based on the previous five Supplemental HPSRs for MCP, it is assumed no follow-up NAC will be required, but limited assistance can be provided at Caltrans' request.
  - Records Search
    - Based on the previous five Supplemental HPSRs for MCP, it is anticipated that no records search update is required.
  - Field Survey
    - LSA will complete an archaeological field survey of the areas added to the APE. Based upon available data, it is anticipated that findings will be negative for archaeology (i.e., no resources will be identified within the expanded APE which require recordation and evaluation). In the event resources are identified in the expanded APE that require documentation and evaluation, a contract modification will be required, and a schedule adjustment may also be necessary.
  - Archaeological Survey Report (ASR)
    - LSA will prepare an ASR that details the results of the archaeological field survey.
  - Historic Resources Evaluation Report (HRER)
    - Based upon available data, it is assumed no built environment resources requiring evaluation will be identified within the areas added to the APE and no HRER will be necessary.



## 03 Scope Assumptions

- Supplementary Historic Property Survey Report (SHPSR)
  - LSA will prepare a SHPSR, the cover document for all cultural reports that are required. This report will summarize the revisions to the project engineering and all other results of the study.
- Bat Habitat Assessment and Nighttime Emergence Surveys (LSA Task 6.3)
  - Daytime bat habitat assessments will be conducted at culvert locations and large rock/boulder outcroppings along the corridor.
  - Follow-up nighttime emergence surveys will be conducted during the maternity season (May 1-August 31) in 2022 at locations containing suitable bat habitat to ascertain whether maternity colonies are present.
  - During 35% design, a single (1) memorandum documenting the results of the habitat assessment and any required nighttime emergence surveys will be prepared. The memorandum report will also include an assessment of the proposed project's effect on continued use of the culvert structures or rock outcrops by bats, as well as recommendations for specific mitigation, avoidance, and/or minimization measures to minimize potential adverse effects to bats.
- Environmental Commitments Record (LSA Task 7.1)
  - If revisions to the avoidance, minimization, and/or mitigation measures from the Final EIR/EIS are required as part of the regulatory permitting process, then LSA will develop an updated Environmental Commitment Record (ECR) during 100% design.
  - The ECR would be updated to include additional measures required by three regulatory agencies (USACE, RWQCB, and CDFW), as specified in the regulatory permits obtained for the project.
  - The ECR would also include any measures specified in the Paleontological Mitigation Plan and Bat Roosting Habitat and Suitability Assessment.
  - During 100% design, LSA will coordinate with Jacobs to ensure that applicable measures in the ECR, from the approved Final EIR/EIS, are included in the final project plans and specifications.
- Paleontological Mitigation Plan (LSA Task 7.2)
  - LSA will prepare a Paleontological Mitigation Plan (PMP) following the guidelines in the California Department of Transportation (Caltrans) Standard Environmental Reference, Environmental Handbook Volume 1, Chapter 8 (as available online at the date of this proposal and last updated 8/11/14); the Society of Vertebrate Paleontology; and industry best practices. No field work is associated with this task.
  - Sections within the PMP will include: an introduction, background information on the project and previous research, a description of the potential paleontological resource(s), the proposed scope of monitoring and laboratory work, decision thresholds on when to reduce or increase monitoring, discussion of the project schedule and duration, a cost estimate to provide paleontological mitigation with justification, a bibliography of the references cited in

## 03 Scope Assumptions

the report, identification of the curation facility, and appendices for items such as resumes of key project personnel.

- This scope includes up to three rounds of review and responses to comments from RCTC and Caltrans District 8.

### Task 3.15 Public Outreach (Arellano)

- Design Phase:
  - Project Meetings and Administration
    - Participation in project meetings monthly, up to 18 total during Design
  - Public Outreach Plan
    - Draft and Final Public Outreach Plan
  - Stakeholder Database
    - Draft contact database
    - Maintain and update contact database
  - Key Messages
    - Develop key messages to reflect the current project phase
  - Fact Sheet
    - Draft content for project fact sheet in English and Spanish and update content as needed (every 6 months, up to 3 total during Design)
  - Digital Outreach
    - Project Website: Draft copy and graphics for webpage updates (quarterly, up to 6 times total during Design)
    - Email Updates: Draft copy and distribution of notices (twice-annually, up to 3 total during Design)
    - Social Media Posts: Draft copy and graphics, including periodic in-house videos and Instagram Stories, for Facebook, Twitter, and Instagram posts (up to 54 total, 18 per platform, during Design)
  - Project Briefings
    - AA will assist with the scheduling and logistics, presentation development, and will be available to attend and take notes at up to ten (10) Elected Officials/Stakeholder and Business Briefings.
    - AA will assist with the scheduling and logistics, agenda development, and will be available to attend and take notes at up to 12 Monthly Task Force Briefings. The Task Force Briefings will include City Engineers, County Staff, Emergency Responders and other stakeholder that need to be involved with any public impact planning.

## 03 Scope Assumptions

- Community Meetings (Up to 3 Meetings)
  - AA is prepared to provide support to RCTC for the coordination of up to three public information meetings. Support activities will include coordination of dates and times with the project team, organization of facility details (including equipment and insurance, if applicable), planning task matrix, set-up and clean-up, bilingual staffing, photography, refreshments and preparation of meeting notifications and summaries. These meetings can easily be switched to a virtual format is requested by RCTC.
    - Host up to three (3) community meetings
    - Provide meeting logistics, notification and documentation for meetings

DRAFT

**MODEL AGREEMENT - EXHIBIT "B"**  
**SCHEDULE OF SERVICES**

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## RCTC - PS&E for the Mid County Parkway Project Construction Contract No. 3

ID	Task Name	Duration	Start	Finish	2, 2022 S O N D	Half 1, 2023 J F M A M J	Half 2, 2023 J A S O N D	Half 1, 2024 J F M A M J	Half 2, 2024 J A S O N D	Half 1, 2025 J F M A M J	Half 2, 2025 J A S O N D	Half 1, 2026 J F M A M J				
1	RCTC - PS&E for the Mid County Parkway Project Construction Contract No. 3	999 days	Wed 9/14/22	Tue 8/11/26												
2	Plans, Specifications, and Estimate (PS&E) Design Phase	539 days	Wed 9/14/22	Wed 10/23/24												
3	Commission meeting to approve contract award	0 days	Wed 9/14/22	Wed 9/14/22	Commission meeting to approve contract award											
4	Audit	15 days	Thu 9/15/22	Wed 10/5/22	Audit											
5	Notice to Proceed	1 day	Thu 10/6/22	Thu 10/6/22	Notice to Proceed											
6	PS&E Design	522 days	Fri 10/7/22	Wed 10/23/24	PS&E Design											
7																
8	Bid Support	100 days	Thu 10/24/24	Tue 3/18/25												
9	Board Approval for Release of RFP	1 day	Thu 10/24/24	Thu 10/24/24	Board Approval for Release of RFP											
10	Project Advertise	45 days	Fri 10/25/24	Tue 12/31/24	Project Advertise											
11	Open Bids	3 days	Thu 1/2/25	Mon 1/6/25	Open Bids											
12	Board Approval of Contractor	50 days	Tue 1/7/25	Mon 3/17/25	Board Approval of Contractor											
13	Award for Construction	1 day	Tue 3/18/25	Tue 3/18/25	Award for Construction											
14																
15	Construction Support	360 days	Wed 3/19/25	Tue 8/11/26												
16	Construction Support	360 days	Wed 3/19/25	Tue 8/11/26	Construction Support											
17	Prepare As-Built	80 days	Wed 2/25/26	Tue 6/16/26												
18	Complete Construction	1 day	Wed 6/17/26	Wed 6/17/26									Complete Construction			

Project: RCTC MCP CC #3  
Date: Thu 8/4/22

EXHIBIT "C"

COMPENSATION PROVISIONS

[attached behind this page]

DRAFT

# EXHIBIT "C"

## COMPENSATION SUMMARY<sup>1</sup>

FIRM	PROJECT TASKS/ROLE	COST
<b>Prime Consultant:</b>		
Jacobs Engineering Group	PS&E Lead	\$ 9,377,699.80
<b>Sub Consultants:</b>		
Arellano Associates	Public Outreach	122,218.06
Coast Surveying	Surveying and Mapping	312,795.96
Contech	Wildlife Crossing	75,000.00
FPL and Associates	Traffic Analysis	226,104.00
LSA Associates	Environmental Compliance	396,594.53
Tatsumi and Partners	Landscape Architect	71,738.11
VRPA Technologies	Traffic Engineering	60,031.73
<b>TOTAL COSTS</b>		<b>\$ 10,642,182.19</b>

<sup>1</sup> Commission authorization pertains to total contract award amount. Compensation adjustments between consultants may occur; however, the maximum total compensation authorized may not be exceeded.





**RCTC Agreement No. 23-31-004-00**

**COOPERATIVE AGREEMENT  
BETWEEN  
THE RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AND  
THE COUNTY OF RIVERSIDE  
THROUGH THE COUNTY OF RIVERSIDE TRANSPORTATION AND LAND  
MANAGEMENT AGENCY**

**FOR THE MID COUNTY PARKWAY PROJECT - CONSTRUCTION CONTRACT 3**

This Cooperative Agreement ("Cooperative Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 ("Effective Date") by and between the Riverside County Transportation Commission ("RCTC") and the County of Riverside, a political subdivision of the State of California, through the County of Riverside Transportation and Land Management Agency ("County"). RCTC and the County are sometimes referred to herein individually as a "Party", and collectively as the "Parties".

**RECITALS**

WHEREAS, RCTC is undertaking the Mid County Parkway project ("MCP").

WHEREAS, RCTC, in cooperation with the Federal Highway Administration ("FHWA"), the California Department of Transportation ("Caltrans") and the County, as part of the MCP proposes to build a portion of the project in unincorporated Riverside County, which is referred to in this Cooperative Agreement as the "Project".

WHEREAS, the Project will include: addition of one mixed flow lane in each direction, and a median barrier or raised median, from approximately 0.5 miles east of Rider Street to Warren Road. The road section of the Project will have a 12-foot median and five-foot outside paved shoulders, and include traffic signals, drainage facilities, and wildlife crossings (one overcrossing and minor culvert crossings under the road). The Project is further described and depicted in Exhibit "A" attached to this Cooperative Agreement and incorporated herein by reference.

WHEREAS, the Project is sometimes referred to by the Parties as the Mid County Parkway Project - Construction Contract 3.

WHEREAS, it is the intent of the Parties to enter into this Cooperative Agreement to establish and coordinate the responsibilities of the Parties with respect to the Project, establish certain opportunities for cooperation and coordination and set forth various responsibilities of the Parties all as further set forth herein.

WHEREAS, the Parties acknowledge that RCTC has or shall fully comply with the California Environmental Quality Act (CEQA) and all other applicable laws, as a

precondition to construction of the Project.

WHEREAS, RCTC intends, pursuant to a public bidding process in accordance with State law, to select a construction contractor to complete the Project ("Contractor").

WHEREAS, because the Project, if constructed, may impact County owned and/or maintained facilities, coordination between the Parties prior to and during construction of the Project is crucial to provide for mitigation of potential impacts that construction may have on the County, and to ensure that improvements within the County comply with applicable standards.

WHEREAS, the Project includes the following components:

- Plans, Specifications, and Estimate (PS&E)
- Right of Way Acquisition and Utility Relocation
- Construction
- Acceptance by the County for Operation and Maintenance of Improvements within County's Jurisdiction

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually understood and agreed by RCTC and the County as follows:

### **TERMS**

1. **Definitions.** In addition to the definitions set forth in the recitals above, the following terms shall have the meanings as set forth below.

1.1 As used in this Cooperative Agreement, the term "County's Jurisdiction" shall mean and refer to the areas within the Project limits either owned and/or maintained by the County. As used herein, the term "County's Jurisdiction" expressly excludes the State highway right of way.

1.2 As used in this Cooperative Agreement, the term "County Standards" shall mean and refer to the County's standard plans, specifications, policies, guidelines, and ordinances, design criteria, construction details, and testing/inspection requirements, and amendments and supplements thereto, for work within the County's Jurisdiction, approved by the County and in effect prior approval of the 60% complete PS&E package.

2. **Term.** This Cooperative Agreement shall be effective as of the Effective Date, and shall continue in effect until the Project is accepted by the County as referenced in Sections 4.16 and 5.6, unless otherwise terminated as specified in this Cooperative Agreement ("Term").

3. Agreement to Cooperate. The Parties agree to mutually cooperate in order to help ensure that the Project is successfully completed with minimum impact to both Parties, and the public, and the County commits to support the Project.

4. Obligations of the County. To the best of County's ability, and if consistent with all applicable local, state and federal laws and regulations, the County agrees as follows:

4.1 The County shall provide a County oversight engineer to oversee the work during plan preparation and construction, at its own cost.

4.2 The County shall timely review design plans for the Project, and provide any approvals or comments within thirty (30) days of receipt of the plans. If the County fails to provide any comments or its approval within said time period, RCTC shall provide notice to the Transportation Director of the County that the design plans shall be deemed approved by the County if no comments are received within an additional fifteen (15) days.

4.3 The County will be provided an opportunity to be involved in the process of selecting Project consultants in compliance with all applicable local, state and federal laws.

4.4 The County shall not directly or indirectly encourage any third parties to object, oppose, delay, frustrate, or disrupt the full and complete design, analysis, consideration, potential approval, or implementation of the Project. Such obligation shall extend both to RCTC's processes regarding the Project, but also to any other federal, state, or local review or permitting processes.

4.5 The County shall not request any mitigation measures, conditions or exactions that are disproportionate to the Project impacts or that lack a nexus to the Project impacts, as reasonably determined by RCTC.

4.6 The County shall not take any action with the intent or effect of unnecessarily impacting the timely implementation of the Project by RCTC.

4.7 The County shall timely process the required encroachment permits to cover the Contractor's work on the Project within the County right of way. Encroachment permits shall be processed in no more than five (5) working days after receipt of a complete encroachment permit application from Contractor. The County shall not issue any encroachment permits to any other contractors if the proposed work thereunder has the potential to delay or impact the Project, without first coordinating the same with the Contractor and RCTC. All required encroachment permits to be issued by County shall be issued in the name of RCTC.

4.8 The County shall permit ingress to and egress from the Project from County-maintained roads.

The County shall have appropriate representatives regularly attend meetings of the Contractor's task forces formed for public information, traffic management and

detours, local street construction, and related construction work impacting the County, and shall provide input at such meetings related to Project work that may impact County residents.

4.9 The County shall waive any and all charges and fees related to plan review and inspections for the Project.

4.10 The County shall waive any street trenching restrictions/moratoriums currently in place within the County limits as respect to the Project work, and shall waive any other local requirements that prohibit or interfere with construction of the Project.

4.11 The County shall timely, so as not to delay the Project, review, approve, and execute any necessary agreements or amendments to agreements with RCTC, Caltrans and/or the Contractor related to the Project work or any Project facilities within the County's Jurisdiction.

4.12 The County shall relocate any County-owned utility that interferes with the Project.

4.13 The County shall not approve, without advance written notification to and consultation with RCTC, any land use plans, new projects or developments within its jurisdiction that are inconsistent with, may impact or that interfere with the Project.

4.14 The County shall not allow any encroachment within the County's right of way if such encroachment may interfere with the Project or the Project construction, without first coordinating the same with the Contractor and RCTC.

4.15 The County shall install, maintain, operate, and repair its facilities in a manner which avoids or minimizes, to the extent possible and reasonable, any impact to the Project.

4.16 Following completion of the Project work within the County's Jurisdiction and prior to final acceptance thereof, the County shall timely review and provide approval of the work or identify any punch list work within fifteen (15) days from the written request for the final inspection. The County shall assume responsibility of the Project facilities completed within the County's Jurisdiction upon acceptance of the work, and shall be solely responsible and liable for the operation, maintenance and use of, including all subsequent public use of, the Project, at no cost or expense to RCTC.

4.17 The County will make its best efforts to perform all obligations of the County related to the Project in such a manner as to allow the Project to progress as scheduled.

4.18 The County shall contribute one million dollars of local funds to RCTC within 30 days of the execution of this Cooperative Agreement, for the performance of preliminary right-of-way and utility investigations, public outreach, and design efforts. Any unused funds will be refunded to the County.

## 5. Obligations of RCTC

5.1 RCTC shall be responsible for providing all services to complete the Project, or as reasonably necessary for Project completion. RCTC shall be responsible for the process of selecting Project consultants and the Contractor in compliance with all applicable local, state and federal laws. RCTC shall be responsible for obtaining all applicable environmental clearances and permits necessary to complete the Project, and for acquiring all right of way as further detailed in Article 6.

5.2 RCTC shall incorporate the County Standards for work within the County's Jurisdiction into the design, and shall require that improvements within the County's Jurisdiction be completed pursuant to such standards.

5.3 RCTC shall provide the County an opportunity to review and approve all design documents for the Project.

5.4 RCTC shall provide the County an opportunity to inspect the Project work during construction.

5.5 In the event the County and RCTC are in disagreement with a design standard or construction method, County's standards shall prevail for work within the County's Jurisdiction.

5.6 As between RCTC and the County, RCTC and its consultants shall be responsible for construction inspection of the Project work to ensure conformance with the construction contract. RCTC shall allow County staff access to the Project site, upon reasonable notice, to perform observation of any Project improvements. County inspectors shall communicate any construction deficiencies during construction, including a final punch list, to RCTC for completion. County has the final authority to accept the improvements.

5.7 RCTC shall assign all warranties for the Contractor work to the County upon County's acceptance of the Project.

5.8 RCTC shall require its Contractor to obtain all required permits and approvals for all Project work including encroachment permits from County for construction of any Project work within the County's Jurisdiction.

5.9 RCTC shall include, in its contract with the Contractor, a requirement that the Contractor include the County as an additional insured and as an indemnified party under said agreement.

5.10 As between the RCTC and the County, RCTC shall be responsible for design, reviews, approvals, and inspection of the Project work within the County's Jurisdiction to ensure conformance with the County Standards during completion of the Project design, selection of the Contractor, and during Project construction and maintenance periods.

5.11 Except in the case of an unforeseen circumstance, RCTC shall require its Contractor to provide at least a fifteen (15) day notification to County prior to any full or partial closure of any streets within County's Jurisdiction exceeding one (1) day in duration. Short term closures less than one (1) day in duration shall require forty eight (48) hours prior notice.

5.12 RCTC will institute a public outreach campaign to keep emergency responders, School District transportation departments, transit operators, the residents of the County and the general public apprised of the Project work, and any street closures and other impacts to use of the County right of way that may result from the Project. In addition, RCTC shall develop and maintain a written Emergency Response plan that includes emergency contact information for RCTC's Contractor, County of Riverside, City of Perris, emergency responders and Contractor personnel that would be expected to respond to an emergency situation.

5.13 RCTC shall provide as-built plans for Project work within County's Jurisdiction within 120 days of Notice of Completion.

## 6. RCTC Right of Way Obligations.

6.1 RCTC is responsible for all right of way work for the Project except as expressly set forth in this Cooperative Agreement.

6.2 RCTC will make all necessary arrangements with utility owners for the timely accommodation, protection, relocation, or removal of any existing utility facilities that conflict with construction of the Project or that violate County's encroachment policy.

6.3 RCTC will provide County a copy of conflict maps, relocation plans, proposed notices to owner, reports of investigation, and utility agreements (if applicable) for County's concurrence prior to issuing the notices to owner and executing the utility agreement. All utility conflicts will be fully addressed prior to Right-of-Way Certification and all arrangements for the protection, relocation, or removal of all conflicting facilities will be completed prior to construction contract award and included in the Project plans, specifications, and estimate.

6.4 RCTC will provide a land surveyor licensed in the State of California to be responsible for surveying and right-of-way engineering. All survey and right-of-way engineering documents will bear the professional seal, certificate number, registration classification, expiration date of certificate, and signature of the responsible surveyor.

6.5 Acquisition of right-of-way will not occur prior to the approval of the environmental document without written approval from the CEQA lead agency for the Project.

6.6 RCTC will utilize a properly licensed consultant for all right-of-way activities. RCTC shall provide the County with copies of appraisal reports and acquisition documents upon request. RCTC will submit a draft Right-of-Way Certification to County prior to the scheduled Right-of-Way Certification milestone date for review. RCTC will

submit a final Right-of-Way Certification to the County for approval prior to the advertising the construction contract. Physical and legal possession of the right-of-way must be completed prior to advertising the construction contract, unless Parties mutually agree to other arrangements in writing.

6.7 RCTC shall be the lead agency on eminent domain activities, if required for the Project.

6.8 Title to any property to be transferred to County by RCTC shall be free of all encumbrances and liens, except as to those items which County agrees are not in conflict with use of the property for roadway purposes. Upon acceptance, RCTC will provide County with a policy of title insurance in County's name.

7. Dispute Resolution; Legal Disputes. Unless otherwise specified herein, the Parties shall comply with the following procedure in the case of a dispute, claim or controversy arising under or in relation to this Cooperative Agreement.

7.1 *Submission to RCTC Executive Director and Transportation Director.* The dispute shall be referred for negotiation to the RCTC Executive Director and the Director of the County Transportation Department ("Transportation Director"). The RCTC Executive Director and the Transportation Director agree to undertake good faith attempts to resolve said dispute, claim or controversy within ten (10) calendar days after the receipt of written notice from the Party alleging that a dispute, claim or controversy exists. The Parties additionally agree to cooperate with the other Party in scheduling negotiation sessions. However, if said matter is not resolved within thirty (30) calendar days after conducting the first negotiating session, either Party may then request that the matter be submitted to further dispute resolution procedures, as may be agreed upon by the Parties.

7.2 If a matter is not resolved within thirty (30) calendar days after the first negotiating session between the Executive Director and the Transportation Director, unless otherwise agreed upon in writing by the Parties, either Party may proceed with any other remedy available in law or in equity.

7.3 To the extent legally permissible, the Parties agree not to take any action related to the dispute that would negatively impact the Project until the dispute resolution process is completed.

8. Specific Performance.

8.1 The Parties agree that irreparable damage would occur in the event that any of the provisions of this Cooperative Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the Parties, in addition to any other available remedy in law or in equity, shall be entitled to specific performance of the terms hereof, including the issuance of an injunction or injunctions as a remedy for any such breach, to prevent breaches of this Cooperative Agreement and to enforce specifically the terms and provisions of this Cooperative Agreement, this being in addition to any other remedy to which they are entitled at law or in equity. Each of the Parties further hereby waives (a) any defense in any action for specific performance that

a remedy at law would be adequate and (b) any requirement under any law to post security as a prerequisite to obtaining equitable relief. Notwithstanding anything to the contrary contained in this Cooperative Agreement, should RCTC seek County's specific performance, County shall not have to reimburse RCTC pursuant to Section 16 of this Cooperative Agreement. Should County have to reimburse RCTC pursuant to Section 16 of this Cooperative Agreement, RCTC shall not be entitled to County's specific performance.

8.2 Prior to either Party instituting an action for specific performance, the Parties shall comply with the dispute resolution process set forth above in Section 7.1.

9. Indemnification.

9.1 RCTC shall indemnify, defend and hold the County, its directors, officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts, omissions or breach of law, or willful misconduct of RCTC, its officials, officers, employees, agents, consultants or contractors in the performance of RCTC's obligations under this Cooperative Agreement, including the payment of all reasonable attorneys' fees.

9.2 The County shall indemnify, defend and hold RCTC, its directors, officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts, omissions or breach of law, or willful misconduct of the County, its officials, officers, employees, agents, consultants or contractors in the performance of the County's obligations under this Cooperative Agreement, including the payment of all reasonable attorneys' fees.

9.3 The indemnification provisions set forth in this Section 9 shall survive any expiration or termination of this Cooperative Agreement.

10. Disclaimer. In no event shall either Party be responsible or liable for the quality, suitability, operability or condition of any design or construction by the Project consultants or the Contractor, as applicable, and the Parties expressly disclaim any and all express or implied representations or warranties with respect thereto, including any warranties of suitability or fitness for use.

11. Force Majeure. The failure of performance by either Party (except for payment obligations) hereunder shall not be deemed to be a default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; pandemics; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; laws or regulations that govern either Party; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, railroad, or suppliers; acts of



the other Party; acts or failure to act of any other public or governmental agency or entity (other than that acts or failure to act of the Parties); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform or relief from default. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause. Times of performance under this Cooperative Agreement may also be extended in writing by mutual agreement between the Parties.

12. Amendments. This Cooperative Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing; however, no amendments or other modifications of this Cooperative Agreement shall be binding unless executed in writing by both Parties hereto, or their respective successors or assigns.

13. Assignment of Cooperative Agreement. Neither Party may assign or transfer its respective rights or obligations under this Cooperative Agreement without the express written consent of the other Party. Any purported assignment or transfer by one Party without the express written consent of the other Party shall be null and void and of no force or effect.

14. Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of either Party shall be deemed to waive or render unnecessary such Party's consent to or approval of any subsequent act of the other Party. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Cooperative Agreement.

15. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Cooperative Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Cooperative Agreement, which shall be interpreted to carry out the intent of the Parties hereunder.

16. Termination; Repayment Obligation.

16.1 Both RCTC and the County shall have the right at any time, to terminate this Cooperative Agreement, by giving thirty (30) calendar days written notice to the other Party, specifying the date of termination. Notwithstanding the foregoing, following commencement of construction of the Project, the County may only terminate this Cooperative Agreement for a material breach by RCTC of this Cooperative Agreement, after providing RCTC notice of such breach, and reasonable opportunity to cure.

16.2 If the County refuses to issue permits for construction of the Project, or otherwise fails to support the Project or takes any action in violation of the terms of this Cooperative Agreement that impedes the ability of the Project to proceed as planned,

unless County terminates the Cooperative Agreement pursuant to Section 16.1 above, RCTC may terminate this Cooperative Agreement for cause, after providing the County notice of such breach and a reasonable opportunity to cure, and the County shall reimburse RCTC for the Project costs expended following the Effective Date of this Cooperative Agreement through the effective date of termination. In such case, the Parties shall enter into good faith negotiations to establish a reasonable repayment schedule and repayment mechanism. Repayment shall include interest at the legal rate for judgments. Prior to RCTC's termination for cause pursuant to this section, the Parties shall be required to undertake the dispute resolution process described in Section 7 above and RCTC shall be required to provide County with a cost estimate for the Project costs expended following the Effective Date of this Cooperative Agreement through the proposed effective date of termination. Upon repayment by County to RCTC in accordance with this section, all Project documents, Project improvements, Project warranties, title to property for the Project, and any other deliverables or work paid by RCTC for the Project prior to the date of termination and re-paid by County shall become the sole property of County.

16.3 The repayment obligation set forth in this Section 16 shall survive any expiration or termination of this Cooperative Agreement.

17. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Cooperative Agreement, shall survive any such expiration or termination.

18. Third Party Beneficiaries. There are no third-party beneficiaries to this Cooperative Agreement.

19. Relationship of the Parties. RCTC is, for purposes relating to this Cooperative Agreement, an independent contractor of County and shall not be deemed an employee of County. It is expressly understood and agreed that RCTC (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which County employees are entitled, including, but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the Parties and RCTC shall hold County harmless from any and all claims that may be made against County based upon any contention by a third party that an employer-employee relationship exists by reason of this Cooperative Agreement.

20. Delivery of Notices. All notices permitted or required under this Cooperative Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

**COUNTY:**

Riverside Transportation and  
Land Management Agency  
4080 Lemon Street, 8<sup>th</sup> Floor  
Riverside, CA 92501  
Attn: Director of Transportation

**COMMISSION:**

Riverside County  
Transportation Commission  
4080 Lemon Street, 3<sup>rd</sup> Floor  
Riverside, CA 92501  
Attn: Executive Director

Such notice shall be deemed made when personally delivered, electronically delivered to the Directors above provided that receipt of such electronic delivery is confirmed to the sending Party by the receiving Party, or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

21. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this Cooperative Agreement as though fully set forth herein.

22. Entire Agreement. This Cooperative Agreement contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings. All provisions of this Cooperative Agreement shall be interpreted and implemented in a manner consistent with all applicable laws and regulations that govern the Parties.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE  
TO  
COOPERATIVE AGREEMENT NO. 22-31-045-00**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Cooperative Agreement on the date first herein above written.

**RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION**

By: \_\_\_\_\_  
Anne Mayer, Executive Director

Approved as to Form:

By: \_\_\_\_\_  
Best Best & Krieger LLP  
General Counsel

**COUNTY OF RIVERSIDE  
THROUGH THE COUNTY OF  
RIVERSIDE TRANSPORTATION AND  
LAND MANAGEMENT AGENCY**

Approved by the  
BOARD OF SUPERVISORS

By: \_\_\_\_\_  
JEFF HEWITT  
Chairman of the Board

Recommended for Approval:

By: \_\_\_\_\_  
MARK LANCASTER  
Director of Transportation

ATTEST:  
KECIA R. HARPER  
Clerk of the Board

By: \_\_\_\_\_  
Deputy

(SEAL)

Approved as to Form:  
County Counsel

By: \_\_\_\_\_  
DANIELLE MALAND  
Deputy County Counsel

## EXHIBIT "A"

The proposed Mid County Parkway (MCP) package 3 Project will construct one mix flow lane in the eastbound and westbound directions from 0.5 miles east of Rider Street to Warren Road. The design will include one of the two ultimate MCP bridges over the San Jacinto River, which will accommodate the eastbound lanes, but the consultant may break up the PS&E into two parts so that the roadway can be widened on each side of the bridge under one construction contract and the bridge itself (with approaching roadway) constructed with another construction contract, so that the each part can be funded more easily. Also included will be traffic signals, drainage facilities, and wildlife crossings and associated work.



**RCTC Agreement No. 23-31-005-00**

**Endowment Management Agreement  
By and Between  
Riverside County Transportation Commission and  
Rivers & Lands Conservancy**

This Endowment Management Agreement (“**Agreement**”) is entered into by and between Riverside County Transportation Commission (“**Grantor**”), and Rivers & Lands Conservancy, a California non-profit corporation (“**RLC**” or “**Endowment Holder**”) (together, the “**Parties**,” and individually a “**Party**”), for the creation and management of an Endowment Fund (“**Fund**”) as of the “Effective Date” as hereinafter defined.

**WHEREAS**, this Agreement is necessitated by the terms and conditions required in the following state agency permit, sometimes referred to herein as the “**Agency Permit**” and included as Exhibit A:

1. California Department of Fish and Wildlife (“**Department**”) Section 1602 Streambed Alteration Agreement No. 1600-2018-0195-R6 Revision 2 (the “**Section 1602 SAA**”) and

**WHEREAS**, to satisfy requirements of the Agency Permit, Grantor will grant, concurrent with the execution of this Agreement, to RLC a perpetual conservation easement (“**Conservation Easement**”) over certain real property consisting of approximately 8.43 acres in the County of Riverside, State of California, which is legally described on **Exhibit “B.”** and depicted on **Exhibit “C,”** attached hereto and incorporated by this reference (the “**Property**”), and which is found on portions of Assessor Parcel Numbers 413-380-013, 413-380-005, and 413-380-004 to provide mitigation for impacts of Grantor’s Mid-County Parkway Project (the “**Project**”);

**WHEREAS**, the Conservation Easement obligates RLC to monitor for compliance with the Conservation Easement and to undertake certain in-perpetuity, ongoing obligations with respect to the Property all as specifically described in the Conservation Easement (the “**Land Management Activities**”), excluding any and all of Grantor’s non-transferable obligations for construction, maintenance and monitoring of the Property, which are also described in the Conservation Easement;

**WHEREAS**, the Agency Permit and the Conservation Easement require Grantor to establish a long-term financing or funding mechanism to provide ongoing payment for Land Management Activities on the Property;

**WHEREAS**, the property analysis record or equivalent analysis for the Property created by RLC (the “**Endowment Assessment**”) calculated the amount of money (the “**Endowment Amount**”) necessary to provide a source of perpetual funding for the Land Management Activities. The Endowment Assessment is attached as **Exhibit “D”** and incorporated herein by reference;

**WHEREAS**, the Parties intend that RLC will perform the Land Management Activities on the Property in accordance with the Endowment Assessment, using funds provided by Grantor in accordance with the terms of this Agreement; and

**NOW, THEREFORE**, in consideration of the mutual promises made herein, and for other and further consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## **I. PURPOSES**

1. The purpose of this Agreement is to establish a non-wasting endowment account (“**Endowment Account**”) with an “**Account Holder**,” as hereinafter defined, of the Parties’ mutual agreement into which funds equivalent to the Endowment Amount shall be deposited (“**Endowment Deposit**”) and to set forth the Parties’ respective responsibilities with respect to the Endowment Amount to be held in the Endowment Account.
2. To the extent the funds are subject to the Uniform Prudent Management of Institutional Funds Act (Cal. Probate Code, section 18501, *et seq.*) (“**UPMIFA**”), this Agreement is the record under which the funds are transferred to, and held by, Endowment Holder, and as such shall be considered the “gift instrument” for purposes of UPMIFA. This Agreement shall be deemed in all respects to set forth the Parties’ intent as to the uses, benefits, purposes, and duration of the Endowment Account.
3. As described more fully herein, the Endowment Holder will be responsible to ensure that monies deposited in the Endowment Account will be invested and managed in accordance with this Agreement to achieve the objectives set forth in this Agreement. The Endowment Account will be managed as a long-term investment intended to exist indefinitely and fund necessary costs of the Land Management Activities, as hereinafter defined, which are required by the Agency Permit and the Conservation Easement and will be invested accordingly in a diversified investment portfolio in accordance with the endowment investment policy attached to this Agreement as **Exhibit “E”**, and incorporated herein by reference, which may be amended from time-to-time by Endowment Holder.
4. The use of the Endowment Account will be limited by the amount of money available in the Endowment Account at any given time, and by the stated purposes as described in this Agreement. Endowment Account interest earnings beyond those necessary to provide for growth of the Endowment Account commensurate with inflation may be used by the RLC to fund annual Land Management Activities on Property. In the event Endowment Holder becomes aware of a conflict between the direction provided by this Agreement or any of the Exhibits attached hereto, Endowment Holder shall notify and confer with Grantor to resolve the issue to the mutual satisfaction of the Parties.

## **II. DEFINITIONS**

1. “Account Holder” or “Account Holders” shall mean respectively one or more financial institution(s) that is a member of the Federal Deposit Insurance Corporation (“**FDIC**”) or Securities Investor Protection Corporation (“**SIPC**”) or any successor organization to the FDIC or SIPC.



2. “Agency” shall mean the Department.
3. “Agreement” shall mean this Endowment Management Agreement entered into between Grantor and RLC, establishing the terms and conditions pursuant to which the Endowment Holder will accept custody of, and manage the Endowment Funds and disperse funds.
4. “Effective Date” shall mean the date of the signature of the second Party to sign this Agreement.
5. “Endowment Account” is a sum of money in a long term stewardship account, held in trust in a fund designated by Endowment Holder. The Endowment Account is to be maintained and managed in perpetuity in strict accordance with Government Code sections 65965-69568, Probate Code sections 18501-18510, and this Agreement to generate earnings and appreciation in value for use in funding Land Management Activities. The Endowment Account shall comprise the Endowment Amount and all interest, dividends, gains, other earnings, additions and appreciation thereon, as well as any additions thereto.
6. “Endowment Amount” shall mean Four Hundred Twenty Six Thousand and Four Hundred and Fifty Seven and No/100 Dollars (**\$426,457.00**), which is the amount of money identified in the Endowment Assessment by RLC as the amount of money that would be necessary to carry out Land Management Activities, and that is required to be provided by Grantor to the Endowment Holder to fund the Endowment Account.
7. “Endowment Assessment” shall mean the analysis of the costs of perpetual long-term land management and maintenance, monitoring, or other activities on the Property, and associated calculation of the Endowment Amount, required by the Agency Permit. The Endowment Assessment may be calculated pursuant to property analysis software or otherwise.
8. “Endowment Deposit” is the deposit required to be made by the Grantor to the Endowment Holder to fund the Endowment Account. The Endowment Deposit received by the Endowment Holder shall be deposited into the Endowment Account.
9. “Land Management Activities” shall mean those activities which RLC as Grantee under the Conservation Easement and Endowment Holder of the Endowment Account has agreed to undertake and which are described the Conservation Easement, and in the Endowment Assessment.
10. “Party” and “Parties” shall mean respectively Grantor and RLC individually, and Grantor and RLC together.
11. “Reporting Period” shall mean from January 1 of each calendar year to December 31 of each calendar year, unless this Agreement is terminated, in which case the final Reporting Period shall be thirty (30) days prior to the date of termination of this Agreement.

### **III. ENDOWMENT ACCOUNT ESTABLISHMENT, INVESTMENT, AND ADMINISTRATION**

1. RLC agrees to establish an Endowment Account with an Account Holder, of the Parties' mutual agreement, in accordance with this Agreement into which the Endowment Amount shall be deposited.
2. Grantor shall pay to Endowment Holder the Endowment Amount to fund the Endowment Account.
3. Concurrently with the execution of this Agreement, Grantor shall pay to RLC Sixty Six Thousand and One Hundred and Forty One and No/100 Dollars (**\$66,141.00**) ("**Initial Financial Requirement**"), which Initial Financial Requirement is for the purpose of reimbursing RLC for its costs and expenses incurred in connection with its acceptance of the Endowment Amount into the Endowment Account, and for fulfilling certain of Grantee's obligations specified in the Conservation Easement for up to the first three (3) years following the date of this Agreement and the Conservation Easement. No further assessments or fees are due to RLC for its expenses in carrying out the obligations in either this Agreement or as provided in the Conservation Easement.
4. Endowment Holder shall invest the monies in the Endowment Account consistent with this Agreement, including but not limited to this Section III and Section I.4 of this Agreement and applicable State and Federal laws. Day-to-day investment decisions will be made by RLC based upon advice with a professional investment advisor of financial institution with which RLC has established or will establish an investment advisory relationship. RLC may rely on the advice of any such adviser, and may delegate day-to-day investment decision-making authority, consistent with applicable State and Federal law, to such adviser with respect to management of the Endowment Account.
5. For investment purposes only, RLC may commingle any or all of the assets of the Endowment Account with other funds held or managed by RLC that are subject to similar investment purposes and restrictions. The intent of such actions is to allow RLC to pool funds subject to similar investment purposes and restrictions for collective management, such that all participating funds may benefit from efficiencies of scale. Any funds from the Endowment Account commingled in this manner shall at all times remain subject to applicable State law, consistent with UPMIFA or any applicable successor to such law.
6. To the extent sufficient funds exist, a portion of the interest and earnings on the Endowment Amount balance shall be reinvested by Endowment Holder into the Endowment Account to provide for growth of the Endowment Account commensurate with inflation using the annual Consumer Price Index (CPI) data that is published every February by the California Department of Industrial Relations, Division of Labor Statistics and Research, for all urban consumers. Any Endowment Account revenues (including earnings and interest) remaining after the Endowment Account is adjusted for inflation that exceeds the anticipated annual long term management expenses of the Property are to be retained in the Endowment Account by the Endowment Holder and may be used by the RLC to fund unexpected expenses.
7. Grantor acknowledges that Grantee's Board of Directors has established an hourly billing rate for Grantee's staff, which rate is subject to adjustment from time-to-time by the Board; such

hourly billing rate is used by Grantee to calculate the amount to be paid to Grantee from the Earnings (as hereinafter defined), for fulfilling its obligations hereunder.

#### **IV. RECORDS, REPORTING PROCEDURES AND AUDIT**

1. Endowment Holder shall prepare an annual funding report (“**Annual Funding Report**”) for each calendar year this Agreement is in effect.
2. Pursuant to California Government Code Section 65966(e), the Annual Funding Report shall describe in reasonable detail and shall include at a minimum the following information:
  - (a) The balance of the Endowment Account at the beginning of the Reporting Period;
  - (b) The amount of the Endowment Account balance reinvested by Endowment Holder into the Endowment Account to provide for growth of the Endowment Account commensurate with inflation (CPI calculation shall be provided);
  - (c) The net amounts of investment earnings, gains, and losses during the Reporting Period including both realized and unrealized amounts;
  - (d) The administrative expenses charged to the Endowment Account from internal or third-party sources during the Reporting Period;
  - (e) Detail all expenses incurred by or on behalf of Endowment Holder for Land Management Activities, including adaptive management, performed during the Reporting Period;
  - (f) Describe any discrepancy between the Land Management Activities expected to be performed during the Reporting Period in accordance with the Conservation Easement, and the Endowment Assessment and the Land Management Activities actually performed during the Reporting Period;
  - (g) Describe any discrepancy between the costs of the Land Management Activities as modeled in the Endowment Assessment and the costs of the Land Management Activities actually performed during the Reporting Period;
  - (h) The balance of the Endowment Account at the end of the Reporting Period;
  - (i) The specific asset allocation percentages including, but not limited to, cash, fixed income, equities, and alternative investments; and
  - (j) The most recent financial statements for the Endowment Holder audited by an independent auditor who is, at a minimum, a certified public accountant.
3. Endowment Holder agrees that in preparing the Annual Funding Report and in maintaining its own records relevant to the Endowment Account, that it shall use accounting standards promulgated by the Financial Accounting Standards Board or any other successor entity.

4. Copies of the Annual Funding Report shall also be submitted to the Agencies upon request.

5. Endowment Holder agrees that Grantor shall have the right to review and to copy any records and supporting documentation pertaining to the Endowment Account. Endowment Holder agrees to maintain such records for possible audit by Grantor for a minimum of three (3) years following the relevant calendar year, unless a longer period of records retention is stipulated. Endowment Holder agrees to allow the Grantor or its designated representative access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

#### **V. LIMITATIONS ON ENDOWMENT HOLDER'S LIABILITY**

RLC shall not be liable to Grantor or other persons for losses arising from investments pursuant to this Agreement. RLC shall maintain reasonable and customary supervision and employment policies for its employees, but shall be liable for the acts of its employees only to the extent of a breach of the RLC's obligations under this Agreement by such employees when they are acting within the course and scope of their employment. RLC shall have no obligation to expend any monies satisfying its obligations under the Conservation Easement, other than the revenues earned on the Endowment Account.

#### **VI. FIDUCIARY OBLIGATIONS OF ENDOWMENT HOLDER**

1. Endowment Holder shall make no disbursement or obligation of funds in the Endowment Account except in strict accordance with the provisions of this Agreement.

2. Endowment Holder shall have a duty of loyalty to Grantor with respect to the Endowment Account, and shall not use or borrow against funds in the Endowment Account for its own benefit.

3. In carrying out its obligations under this Agreement, Endowment Holder shall apply the following principles of fiduciary without exception:

(a) There shall be no commingling of the Endowment Account with other funds. Funds may be pooled for investment management purposes only in accordance with Section III.4;

(b) Endowment Holder shall have a duty of loyalty and shall not use the Endowment funds for its own personal benefit;

(c) Endowment Holder shall act as a prudent investor of the Endowment funds;

(d) Endowment Holder shall not delegate the responsibility for managing the funds to a third party, but may delegate authority to invest the funds with Endowment Holder's oversight; and

(e) Endowment Holder shall act with prudence when delegating authority and in the selection of agents.

4. RLC, as “Endowment Holder” certifies that it meets all of the requirements set forth in this Section. The certification of RLC required by California Government Code section 65968(e) is attached hereto as Exhibit “H”, and incorporated herein by reference.

## **VII. TERM AND TERMINATION OF AGREEMENT**

1. Term. This Agreement shall be effective from the Effective Date until the date (if any) that a successor endowment holder pursuant to Section IX.1 becomes obligated to perform the Land Management Activities, or until termination occurs pursuant to Section VII.2, whichever is first.

2. Termination. Endowment Holder may, with or without cause, terminate this Agreement by providing at least one hundred eighty (180) days prior written notice to Grantor or its successor, and the Agencies. Regardless of the date that notice of termination is provided and the passage of the intervening one hundred eighty (180) day notice period, termination is not effective unless and until the Endowment Holder has transferred in an orderly fashion the custody, control or other power necessary for the investment, management, and administration of all monies in the Endowment Account together with the transfer of the Conservation Easement to an entity identified by Endowment Holder and approved in writing by the Agencies. Within ninety (90) days following delivery of the monies in the Endowment Account to an approved successor, Endowment Holder shall provide to Grantor with a copy to the Agencies, a final accounting showing the deposits (including interest accrued thereon) and disbursements of all sums received pursuant to this Agreement during the Reporting Period, together with such other documents that the Agencies may reasonably request. Upon delivery of the monies in the Endowment Account to successor endowment holder and final accounting specified above, Endowment Holder’s obligations under this Agreement shall cease and terminate.

## **VIII. CONTACT INFORMATION/COMMUNICATIONS**

1. All approvals, notices, reports and other communications required or permitted under this Agreement shall be in writing and delivered by certified mail personal delivery overnight carrier that provides evidence of delivery. Each Party agrees to notify the other promptly after any change in named representative, address, telephone, or other contact information.

2. The individuals named below shall be the representatives of Grantor and the RLC, respectively, for purposes of this Agreement:

If to Grantor:

Riverside County  
Transportation Commission  
Attn: Executive Director  
4080 Lemon Street, 3rd Floor

If to RLC:

Rivers & Lands Conservancy  
6876 Indiana Avenue  
Suite J-2  
Attn: Executive Director

Riverside, CA 92501

Riverside, CA 92506

With a copy to:

Gresham Savage Nolan & Tilden  
550 E. Hospitality Lane, Suite 300  
San Bernardino, CA 92408  
Attn: J. Matthew Wilcox

Notice shall be deemed effective upon receipt or rejection only.

### **IX. MISCELLANEOUS PROVISIONS**

1. No Assignment. Neither Party may assign this Agreement, in whole or in part, to any individual or other legal entity without the prior written approval of the other Party and the prior written consent of the Agencies.
2. Amendments. This Agreement may be amended only in writing agreed to and signed by both Parties and with the written concurrence of the Agencies.
3. Severability. If any provision of this Agreement is held to be unlawful or invalid by any court of law with duly established jurisdiction over this Agreement, the Parties intend that the remainder of this Agreement shall remain in full force and effect notwithstanding the severance of the unlawful or invalid provision(s).
4. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument.
5. Dispute Resolution. The Parties will cooperate in good faith to achieve the objectives of this Agreement and to avoid disputes. The Parties will use good faith efforts to resolve disputes at the lowest organizational level and, if a dispute cannot be so resolved, the Parties will then elevate the dispute to the appropriate officials within their respective organizations. The Parties may also resolve disputes pursuant to the process outlined in the Conservation Easement.
6. Attorney Fees. In any action to enforce the terms of this Agreement, the Prevailing Party shall be entitled to recover from the nonprevailing party all reasonable attorneys' fees and costs. "Prevailing Party" shall include without limitation a party who dismisses an action in exchange for sums allegedly due; the party who receives performance from the other party for an alleged breach of contract or a desired remedy where the performance is substantially equal to the relief sought in an action; or the party determined to be the prevailing party by a court of law.
7. Independent Capacity. Each of the Parties is acting in its independent capacity in entering into and carrying out this Agreement and not as an agent, employee, or representative of the other Party.

8. Third-Party Rights. This Agreement confers rights and remedies upon the Agencies, as third party beneficiaries, insofar as this Agreement is intended to carry out the requirements and obligations set forth in the Agency Permit. No person, other than the Parties or said named third party beneficiaries, has any rights or remedies under this Agreement. The Parties may not amend or terminate this Agreement without the prior written consent of the Agencies.

9. Warrant of Authority. Each party to this Agreement warrants to the other that its respective signatory has fully right and authority to enter into and consummate this Agreement and the transactions contemplated hereby.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized representatives, intending to be bound legally.

**GRANTOR**

RIVERSIDE COUNTY TRANSPORTATION  
COMMISSION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**RIVERS & LANDS CONSERVANCY**

RIVERS & LANDS CONSERVANCY, a California non-profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_



**EXHIBIT “A”**  
**PERMIT**

DRAFT

**EXHIBIT “B”**  
**LEGAL DESCRIPTION**

DRAFT

**EXHIBIT “C”**  
**LEGAL DEPICTION**

DRAFT

**EXHIBIT “D”**  
**ENDOWMENT ASSESSMENT**

DRAFT

**EXHIBIT “E”**  
**ENDOWMENT INVESTMENT**

DRAFT

**EXHIBIT “F”**  
**RLC ENDOWMENT CERTIFICATION**

DRAFT

**Conservation Endowment Certification**  
**(Cal. Gov. C. 65968(e))**

Pursuant to California Government Code section 65968(e), Rivers & Lands Conservancy, a California non-profit corporation (“**RLC**” or “**Endowment Holder**”) certifies to Riverside County Transportation Commission (“**Permittee**”) that it meets all of the following requirements. Unless otherwise defined herein, all capitalized terms have the meaning given those terms in the Endowment Management Agreement between RLC and Permittee dated \_\_\_\_\_.

1. RLC has the capacity to effectively manage the Endowment Fund;
2. RLC has the capacity to achieve reasonable rates of return on the investment of the Endowment Fund similar to those of other prudent investors for endowment funds and shall manage and invest the Endowment Fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances, consistent with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code) (the “**UPMIFA**”);
3. RLC utilizes generally accepted accounting practices (GAAP) as promulgated by the Financial Accounting Standards Board or any successor entity for nonprofit organizations.
4. RLC will be able to ensure that the Endowment Fund is accounted for, and tied to the Easement Area, and
5. RLC has an investment policy that is consistent with the UPMIFA.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in Riverside, California.

**RIVERS & LANDS CONSERVANCY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President





**RCTC Agreement No. 23-31-006-00**

**Endowment Management Agreement  
By and Between  
Riverside County Transportation Commission and  
Rivers & Lands Conservancy**

This Endowment Management Agreement (“**Agreement**”) is entered into by and between Riverside County Transportation Commission (“**Grantor**”), and Rivers & Lands Conservancy, a California non-profit corporation (“**RLC**” or “**Endowment Holder**”) (together, the “**Parties**,” and individually a “**Party**”), for the creation and management of an Endowment Fund (“**Fund**”) as of the “Effective Date” as hereinafter defined.

**WHEREAS**, this Agreement is necessitated by the terms and conditions required in the following federal and state agency permits, collectively referred to as the “**Agency Permits**” and included as Exhibits A-C:

1. California Department of Fish and Wildlife (“**Department**”) Section 1603 Streambed Alteration Agreement No. 1600-2018-0195-R6 Revision 2 (the “**Section 1603 SAA**”) and

**WHEREAS**, to satisfy requirements of the Agency Permits, Grantor will grant, concurrent with the execution of this Agreement, to RLC a perpetual conservation easement (“**Conservation Easement**”) over certain real property consisting of approximately 13.5 acres in the County of Riverside, State of California, which is legally described on **Exhibit “D.”** and depicted on **Exhibit “E”**, attached hereto and incorporated by this reference (the “**Property**”), and which is found on portions of Assessor Parcel Numbers 426-060-001 and 426-420-001 to provide mitigation for impacts of Grantor’s Mid-County Parkway Project (the “**Project**”);

**WHEREAS**, the Conservation Easement obligates RLC to monitor for compliance with the Conservation Easement and to undertake certain in-perpetuity, ongoing obligations with respect to the Property all as specifically described in the Conservation Easement (the “**Land Management Activities**”), excluding any and all of Grantor’s non-transferable obligations for construction, maintenance and monitoring of the Property, which are also described in the Conservation Easement;

**WHEREAS**, the Agency Permits and the Conservation Easement require Grantor to establish a long-term financing or funding mechanism to provide ongoing payment for Land Management Activities on the Property;

**WHEREAS**, the property analysis record or equivalent analysis for the Property created by RLC and approved by ACOE (the “**Endowment Assessment**”) calculated the amount of money (the “**Endowment Amount**”) necessary to provide a source of perpetual funding for the Land Management Activities. The Endowment Assessment is attached as **Exhibit “F”** and incorporated herein by reference;

**WHEREAS**, the Parties intend that RLC will perform the Land Management Activities on the Property in accordance with the Endowment Assessment, using funds provided by Grantor in accordance with the terms of this Agreement; and

**NOW, THEREFORE**, in consideration of the mutual promises made herein, and for other and further consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## **I. PURPOSES**

1. The purpose of this Agreement is to establish a non-wasting endowment account (“**Endowment Account**”) with an “**Account Holder**,” as hereinafter defined, of the Parties’ mutual agreement into which funds equivalent to the Endowment Amount shall be deposited (“**Endowment Deposit**”) and to set forth the Parties’ respective responsibilities with respect to the Endowment Amount to be held in the Endowment Account.

2. To the extent the funds are subject to the Uniform Prudent Management of Institutional Funds Act (Cal. Probate Code, section 18501, *et seq.*) (“**UPMIFA**”), this Agreement is the record under which the funds are transferred to, and held by, Endowment Holder, and as such shall be considered the “gift instrument” for purposes of UPMIFA. This Agreement shall be deemed in all respects to set forth the Parties’ intent as to the uses, benefits, purposes, and duration of the Endowment Account.

3. As described more fully herein, the Endowment Holder will be responsible to ensure that monies deposited in the Endowment Account will be invested and managed in accordance with this Agreement to achieve the objectives set forth in this Agreement. The Endowment Account will be managed as a long-term investment intended to exist indefinitely and fund necessary costs of the Land Management Activities, as hereinafter defined, which are required by the Agency Permits and the Conservation Easement and will be invested accordingly in a diversified investment portfolio in accordance with the endowment investment policy attached to this Agreement as **Exhibit “G”**, and incorporated herein by reference, which may be amended from time-to-time by Endowment Holder.

4. The use of the Endowment Account will be limited by the amount of money available in the Endowment Account at any given time, and by the stated purposes as described in this Agreement. Endowment Account interest earnings beyond those necessary to provide for growth of the Endowment Account commensurate with inflation may be used by the RLC to fund annual Land Management Activities on Property. In the event Endowment Holder becomes aware of a conflict between the direction provided by this Agreement or any of the Exhibits attached hereto, Endowment Holder shall notify and confer with Grantor to resolve the issue to the mutual satisfaction of the Parties.

## **II. DEFINITIONS**

1. “Account Holder” or “Account Holders” shall mean respectively one or more financial institution(s) that is a member of the Federal Deposit Insurance Corporation (“**FDIC**”) or Securities Investor Protection Corporation (“**SIPC**”) or any successor organization to the FDIC or SIPC.
2. “Agency” or “Agencies” shall mean ACOE, Department and Regional Board.
3. “Agreement” shall mean this Endowment Management Agreement entered into between Grantor and RLC, establishing the terms and conditions pursuant to which the Endowment Holder will accept custody of, and manage the Endowment Funds and disperse funds.
4. “Effective Date” shall mean the date of the signature of the second Party to sign this Agreement.
5. “Endowment Account” is a sum of money in a long term stewardship account, held in trust in a fund designated by Endowment Holder. The Endowment Account is to be maintained and managed in perpetuity in strict accordance with Government Code sections 65965-69568, Probate Code sections 18501-18510, and this Agreement to generate earnings and appreciation in value for use in funding Land Management Activities. The Endowment Account shall comprise the Endowment Amount and all interest, dividends, gains, other earnings, additions and appreciation thereon, as well as any additions thereto.
6. “Endowment Amount” shall mean Four Hundred Forty Thousand Two Hundred and Sixty and No/100 Dollars (**\$440,260.00**), which is the amount of money identified in the Endowment Assessment by RLC as the amount of money that would be necessary to carry out Land Management Activities, and that is required to be provided by Grantor to the Endowment Holder to fund the Endowment Account.
7. “Endowment Assessment” shall mean the analysis of the costs of perpetual long-term land management and maintenance, monitoring, or other activities on the Property, and associated calculation of the Endowment Amount, required by the Agency Permits. The Endowment Assessment may be calculated pursuant to property analysis software or otherwise.
8. “Endowment Deposit” is the deposit required to be made by the Grantor to the Endowment Holder to fund the Endowment Account. The Endowment Deposit received by the Endowment Holder shall be deposited into the Endowment Account.
9. “Land Management Activities” shall mean those activities which RLC as Grantee under the Conservation Easement and Endowment Holder of the Endowment Account has agreed to undertake and which are described the Conservation Easement, and in the Endowment Assessment.
10. “Party” and “Parties” shall mean respectively Grantor and RLC individually, and Grantor and RLC together.

11. “Reporting Period” shall mean from January 1 of each calendar year to December 31 of each calendar year, unless this Agreement is terminated, in which case the final Reporting Period shall be thirty (30) days prior to the date of termination of this Agreement.

### III. ENDOWMENT ACCOUNT ESTABLISHMENT, INVESTMENT, AND ADMINISTRATION

1. RLC agrees to establish an Endowment Account with an Account Holder, of the Parties’ mutual agreement, in accordance with this Agreement into which the Endowment Amount shall be deposited.

2. Grantor shall pay to Endowment Holder the Endowment Amount to fund the Endowment Account.

3. Concurrently with the execution of this Agreement, Grantor shall pay to RLC Seventy One Thousand Eight Hundred and Thirteen and No/100 Dollars (**\$71,813.00**) (“**Initial Financial Requirement**”), which Initial Financial Requirement is for the purpose of reimbursing RLC for its costs and expenses incurred in connection with its acceptance of the Endowment Amount into the Endowment Account, and for fulfilling certain of Grantee’s obligations specified in the Conservation Easement for up to the first three (3) years following the date of this Agreement and the Conservation Easement. No further assessments or fees are due to RLC for its expenses in carrying out the obligations in either this Agreement or as provided in the Conservation Easement.

4. Endowment Holder shall invest the monies in the Endowment Account consistent with this Agreement, including but not limited to this Section III and Section I.4 of this Agreement and applicable State and Federal laws. Day-to-day investment decisions will be made by RLC based upon advice with a professional investment advisor of financial institution with which RLC has established or will establish an investment advisory relationship. RLC may rely on the advice of any such adviser, and may delegate day-to-day investment decision-making authority, consistent with applicable State and Federal law, to such adviser with respect to management of the Endowment Account.

5. For investment purposes only, RLC may commingle any or all of the assets of the Endowment Account with other funds held or managed by RLC that are subject to similar investment purposes and restrictions. The intent of such actions is to allow RLC to pool funds subject to similar investment purposes and restrictions for collective management, such that all participating funds may benefit from efficiencies of scale. Any funds from the Endowment Account commingled in this manner shall at all times remain subject to applicable State law, consistent with UPMIFA or any applicable successor to such law.

6. To the extent sufficient funds exist, a portion of the interest and earnings on the Endowment Amount balance shall be reinvested by Endowment Holder into the Endowment Account to provide for growth of the Endowment Account commensurate with inflation using the annual Consumer Price Index (CPI) data that is published every February by the California Department of Industrial Relations, Division of Labor Statistics and Research, for all urban consumers. Any

Endowment Account revenues (including earnings and interest) remaining after the Endowment Account is adjusted for inflation that exceeds the anticipated annual long term management expenses of the Property are to be retained in the Endowment Account by the Endowment Holder and may be used by the RLC to fund unexpected expenses.

7. Grantor acknowledges that Grantee's Board of Directors has established an hourly billing rate for Grantee's staff, which rate is subject to adjustment from time-to-time by the Board; such hourly billing rate is used by Grantee to calculate the amount to be paid to Grantee from the Earnings (as hereinafter defined), for fulfilling its obligations hereunder.

#### **IV. RECORDS, REPORTING PROCEDURES AND AUDIT**

1. Endowment Holder shall prepare an annual funding report ("**Annual Funding Report**") for each calendar year this Agreement is in effect.

2. Pursuant to California Government Code Section 65966(e), the Annual Funding Report shall describe in reasonable detail and shall include at a minimum the following information:

- (a) The balance of the Endowment Account at the beginning of the Reporting Period;
- (b) The amount of the Endowment Account balance reinvested by Endowment Holder into the Endowment Account to provide for growth of the Endowment Account commensurate with inflation (CPI calculation shall be provided);
- (c) The net amounts of investment earnings, gains, and losses during the Reporting Period including both realized and unrealized amounts;
- (d) The administrative expenses charged to the Endowment Account from internal or third-party sources during the Reporting Period;
- (e) Detail all expenses incurred by or on behalf of Endowment Holder for Land Management Activities, including adaptive management, performed during the Reporting Period;
- (f) Describe any discrepancy between the Land Management Activities expected to be performed during the Reporting Period in accordance with the Conservation Easement, and the Endowment Assessment and the Land Management Activities actually performed during the Reporting Period;
- (g) Describe any discrepancy between the costs of the Land Management Activities as modeled in the Endowment Assessment and the costs of the Land Management Activities actually performed during the Reporting Period;
- (h) The balance of the Endowment Account at the end of the Reporting Period;

- (i) The specific asset allocation percentages including, but not limited to, cash, fixed income, equities, and alternative investments; and
  - (j) The most recent financial statements for the Endowment Holder audited by an independent auditor who is, at a minimum, a certified public accountant.
3. Endowment Holder agrees that in preparing the Annual Funding Report and in maintaining its own records relevant to the Endowment Account, that it shall use accounting standards promulgated by the Financial Accounting Standards Board or any other successor entity.
4. Copies of the Annual Funding Report shall also be submitted to the Agencies upon request.
5. Endowment Holder agrees that Grantor shall have the right to review and to copy any records and supporting documentation pertaining to the Endowment Account. Endowment Holder agrees to maintain such records for possible audit by Grantor for a minimum of three (3) years following the relevant calendar year, unless a longer period of records retention is stipulated. Endowment Holder agrees to allow the Grantor or its designated representative access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

#### **V. LIMITATIONS ON ENDOWMENT HOLDER'S LIABILITY**

RLC shall not be liable to Grantor or other persons for losses arising from investments pursuant to this Agreement. RLC shall maintain reasonable and customary supervision and employment policies for its employees, but shall be liable for the acts of its employees only to the extent of a breach of the RLC's obligations under this Agreement by such employees when they are acting within the course and scope of their employment. RLC shall have no obligation to expend any monies satisfying its obligations under the Conservation Easement, other than the revenues earned on the Endowment Account.

#### **VI. FIDUCIARY OBLIGATIONS OF ENDOWMENT HOLDER**

1. Endowment Holder shall make no disbursement or obligation of funds in the Endowment Account except in strict accordance with the provisions of this Agreement.
2. Endowment Holder shall have a duty of loyalty to Grantor with respect to the Endowment Account, and shall not use or borrow against funds in the Endowment Account for its own benefit.
3. In carrying out its obligations under this Agreement, Endowment Holder shall apply the following principles of fiduciary without exception:
- (a) There shall be no commingling of the Endowment Account with other funds. Funds may be pooled for investment management purposes only in accordance with Section III.4;

(b) Endowment Holder shall have a duty of loyalty and shall not use the Endowment funds for its own personal benefit;

(c) Endowment Holder shall act as a prudent investor of the Endowment funds;

(d) Endowment Holder shall not delegate the responsibility for managing the funds to a third party, but may delegate authority to invest the funds with Endowment Holder's oversight; and

(e) Endowment Holder shall act with prudence when delegating authority and in the selection of agents.

4. RLC, as "Endowment Holder" certifies that it meets all of the requirements set forth in this Section. The certification of RLC required by California Government Code section 65968(e) is attached hereto as Exhibit "H", and incorporated herein by reference.

## **VII. TERM AND TERMINATION OF AGREEMENT**

1. Term. This Agreement shall be effective from the Effective Date until the date (if any) that a successor endowment holder pursuant to Section IX.1 becomes obligated to perform the Land Management Activities, or until termination occurs pursuant to Section VII.2, whichever is first.

2. Termination. Endowment Holder may, with or without cause, terminate this Agreement by providing at least one hundred eighty (180) days prior written notice to Grantor or its successor, and the Agencies. Regardless of the date that notice of termination is provided and the passage of the intervening one hundred eighty (180) day notice period, termination is not effective unless and until the Endowment Holder has transferred in an orderly fashion the custody, control or other power necessary for the investment, management, and administration of all monies in the Endowment Account together with the transfer of the Conservation Easement to an entity identified by Endowment Holder and approved in writing by the Agencies. Within ninety (90) days following delivery of the monies in the Endowment Account to an approved successor, Endowment Holder shall provide to Grantor with a copy to the Agencies, a final accounting showing the deposits (including interest accrued thereon) and disbursements of all sums received pursuant to this Agreement during the Reporting Period, together with such other documents that the Agencies may reasonably request. Upon delivery of the monies in the Endowment Account to successor endowment holder and final accounting specified above, Endowment Holder's obligations under this Agreement shall cease and terminate.

## **VIII. CONTACT INFORMATION/COMMUNICATIONS**

1. All approvals, notices, reports and other communications required or permitted under this Agreement shall be in writing and delivered by certified mail personal delivery overnight carrier that provides evidence of delivery. Each Party agrees to notify the other promptly after any change in named representative, address, telephone, or other contact information.

2. The individuals named below shall be the representatives of Grantor and the RLC, respectively, for purposes of this Agreement:

If to Grantor:

Riverside County  
Transportation Commission  
Attn: Executive Director  
4080 Lemon Street, 3rd Floor  
Riverside, CA 92501

If to RLC:

Rivers & Lands Conservancy  
6876 Indiana Avenue  
Suite J-2  
Attn: Executive Director  
Riverside, CA 92506

With a copy to:

Gresham Savage Nolan & Tilden  
550 E. Hospitality Lane, Suite 300  
San Bernardino, CA 92408  
Attn: J. Matthew Wilcox

Notice shall be deemed effective upon receipt or rejection only.

## **IX. MISCELLANEOUS PROVISIONS**

1. No Assignment. Neither Party may assign this Agreement, in whole or in part, to any individual or other legal entity without the prior written approval of the other Party and the prior written consent of the Agencies.
2. Amendments. This Agreement may be amended only in writing agreed to and signed by both Parties and with the written concurrence of the Agencies.
3. Severability. If any provision of this Agreement is held to be unlawful or invalid by any court of law with duly established jurisdiction over this Agreement, the Parties intend that the remainder of this Agreement shall remain in full force and effect notwithstanding the severance of the unlawful or invalid provision(s).
4. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument.
5. Dispute Resolution. The Parties will cooperate in good faith to achieve the objectives of this Agreement and to avoid disputes. The Parties will use good faith efforts to resolve disputes at the lowest organizational level and, if a dispute cannot be so resolved, the Parties will then elevate the dispute to the appropriate officials within their respective organizations. The Parties may also resolve disputes pursuant to the process outlined in the Conservation Easement.



6. Attorney Fees. In any action to enforce the terms of this Agreement, the Prevailing Party shall be entitled to recover from the nonprevailing party all reasonable attorneys' fees and costs. "Prevailing Party" shall include without limitation a party who dismisses an action in exchange for sums allegedly due; the party who receives performance from the other party for an alleged breach of contract or a desired remedy where the performance is substantially equal to the relief sought in an action; or the party determined to be the prevailing party by a court of law.

7. Independent Capacity. Each of the Parties is acting in its independent capacity in entering into and carrying out this Agreement and not as an agent, employee, or representative of the other Party.

8. Third-Party Rights. This Agreement confers rights and remedies upon the Agencies, as third party beneficiaries, insofar as this Agreement is intended to carry out the requirements and obligations set forth in the Agency Permits. No person, other than the Parties or said named third party beneficiaries, has any rights or remedies under this Agreement. The Parties may not amend or terminate this Agreement without the prior written consent of the Agencies.

9. Warrant of Authority. Each party to this Agreement warrants to the other that its respective signatory has fully right and authority to enter into and consummate this Agreement and the transactions contemplated hereby.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized representatives, intending to be bound legally.

**GRANTOR**

RIVERSIDE COUNTY TRANSPORTATION  
COMMISSION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**RIVERS & LANDS CONSERVANCY**

RIVERS & LANDS CONSERVANCY, a California non-profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT “A”**  
**PERMIT**

DRAFT

**EXHIBIT “B”**  
**PERMIT**

DRAFT

**EXHIBIT “C”**  
**PERMIT**

DRAFT

**EXHIBIT “D”**  
**LEGAL DESCRIPTION**

DRAFT

**EXHIBIT “E”**  
**LEGAL DEPICTION**

DRAFT

**EXHIBIT “F”**  
**ENDOWMENT ASSESSMENT**

DRAFT



**EXHIBIT “G”**  
**ENDOWMENT INVESTMENT**

DRAFT

**EXHIBIT “H”  
RLC ENDOWMENT CERTIFICATION**

DRAFT

**Conservation Endowment Certification**  
**(Cal. Gov. C. 65968(e))**

Pursuant to California Government Code section 65968(e), Rivers & Lands Conservancy, a California non-profit corporation (“**RLC**” or “**Endowment Holder**”) certifies to Riverside County Transportation Commission (“**Permittee**”) and the Los Angeles District of the United States Army Corps of Engineers (“**ACOE**”) that it meets all of the following requirements. Unless otherwise defined herein, all capitalized terms have the meaning given those terms in the Endowment Management Agreement between RLC, Permittee and ACOE dated \_\_\_\_\_

1. RLC has the capacity to effectively manage the Endowment Fund;
2. RLC has the capacity to achieve reasonable rates of return on the investment of the Endowment Fund similar to those of other prudent investors for endowment funds and shall manage and invest the Endowment Fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances, consistent with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code) (the “**UPMIFA**”);
3. RLC utilizes generally accepted accounting practices (GAAP) as promulgated by the Financial Accounting Standards Board or any successor entity for nonprofit organizations.
4. RLC will be able to ensure that the Endowment Fund is accounted for, and tied to the Easement Area, and
5. RLC has an investment policy that is consistent with the UPMIFA.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in Riverside, California.

**RIVERS & LANDS CONSERVANCY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: President