



# MEETING AGENDA

## Western Riverside County Programs and Projects Committee

**Time:** 1:30 p.m.  
**Date:** February 24, 2025  
**Location:** BOARD ROOM - County of Riverside Administration Center  
4080 Lemon St, First Floor, Riverside, CA 92501  
TELECONFERENCE SITE  
LARGE CONFERENCE ROOM – French Valley Airport  
37600 Sky Canyon Drive, Murrieta, CA 92563

### COMMITTEE MEMBERS

Wes Speake, **Chair** / Jim Steiner, City of Corona  
Joseph Morabito, **Vice Chair** / Dustin Nigg, City of Wildomar  
Sheri Flynn / Cynthia Barrington, City of Banning  
Lloyd White / Julio Martinez, City of Beaumont  
Clint Lorimore / Todd Rigby, City of Eastvale  
Linda Krupa / Joe Males, City of Hemet  
Brian Berkson / Armando Carmona, City of Jurupa Valley  
Fia Sullivan / Kevin Bash, City of Norco  
Michael Vargas / Elizabeth Vallejo, City of Perris  
Chuck Conder / Patricia Lock Dawson, City of Riverside  
Jose Medina, County of Riverside, District I  
Karen Spiegel, County of Riverside, District II

### STAFF

Aaron Hake, Executive Director  
David Knudsen, 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.



**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, February 24, 2025**

**BOARD ROOM**

**County Administrative Center  
4080 Lemon Street, First Floor  
Riverside, California 92501**

**TELECONFERENCE SITE**

**LARGE CONFERENCE ROOM**

**French Valley Airport  
37600 Sky Canyon Drive  
Murrieta, 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 at the Commission office, 4080 Lemon Street, Third Floor, Riverside, CA, and 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, 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 Commission 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 – SEPTEMBER 23, 2024**

*Page 1*

**6B. AGREEMENTS FOR ON-CALL RIGHT OF WAY APPRAISAL AND APPRAISAL REVIEW SERVICES**

*Page 7*

**Overview**

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Award the following agreements to provide on-call right of way appraisal and appraisal review services for a three-year base period, with two, one-year options to extend the agreements for a total period of performance of up to five years, in an amount not to exceed an aggregate value of \$1,285,000;
  - a) Agreement No. 25-31-008-00 with Bender Rosenthal, Inc;
  - b) Agreement No. 25-31-046-00 with CBRE, Inc;
  - c) Agreement No. 25-31-047-00 with Hawran & Malm, LLC;
  - d) Agreement No. 25-31-048-00 with R.P. Laurain & Associates, Inc.; and
  - e) Agreement No. 25-31-049-00 with Riggs & Riggs, Inc;

- f) Agreement No. 25-31-050-00 with Thompson & Thompson Real Estate Valuation and Consulting, Inc.;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements, on behalf of the Commission; and
- 3) Authorize the Executive Director, or designee, to execute task orders awarded to the consultants under the terms of the agreements.

**7. STATE ROUTE 91 IMPROVEMENTS EAST OF INTERSTATE 15 – AGREEMENT WITH PARSONS TRANSPORTATION GROUP INC.**

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***Overview***

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Approve Agreement No. 09-31-081-16, Amendment No. 15, with Parsons Transportation Group Inc. (Parsons) for completion of a geometric feasibility study for State Route 91 (SR-91) improvements east of Interstate 15 (I-15) in the amount of \$198,130, plus a contingency amount of \$20,000, for a total amount not to exceed \$218,130;
- 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 approve contingency work up to the total not to exceed amount as required for these services; and
- 4) Authorize the expenditure of \$109,065 of 91 Express Lanes toll revenue designated as surplus in accordance with the 2013 Toll Revenue Bonds Indenture to fund 50 percent of the completion of the geometric feasibility study for 91 Improvements east of I-15.

**8. AGREEMENTS AND AN AMENDMENT FOR STATE ROUTE 60/POTRERO BOULEVARD INTERCHANGE PROJECT – PHASE II**

*Page 284*

***Overview***

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Award Agreement No. 25-72-013-00 to Jacobs Project Management Co. for construction management, materials testing, construction surveying and public outreach services for State Route -60/Potrero Boulevard Interchange Project – Phase II (Project) in the amount of \$8,612,400, plus a contingency amount of \$861,240, for a total amount not to exceed \$9,473,640;
- 2) Approve Cooperative Agreement No. 25-72-069-00 with Caltrans that defines the roles and responsibilities for the construction of the Project and identifies and approves \$171,000 for Department Furnished Materials for the Project;

- 3) Approve Cooperative Agreement Amendment No. 24-72-064-01 with the city of Beaumont (City) to authorize Commission staff to be the lead agency on behalf of the City for the construction phase, increase the original cooperative agreement amount of \$5,706,000 by \$2,000,000, including contingency, for a total not to exceed \$7,706,000 for these additional services;
- 4) Approve Cooperative Agreement No. 25-72-066-00 with the City and Western Riverside Council of Governments (WRCOG) for the allocation of \$13,500,000 of Transportation Uniform Mitigation Fee (TUMF) Zone funds by WRCOG for the construction phase of the Project;
- 5) Authorize the Chair or Executive Director, pursuant to legal counsel review, to finalize and execute the agreements on behalf of the Commission;
- 6) Authorize the Executive Director, or designee, to approve contingency work as may be required for the Project; and
- 7) Authorize the Executive Director, or designee, pursuant to legal counsel review, to execute non-funding amendments to the agreements on behalf of the Commission.

**9. INTERSTATE 10 AND STATE ROUTE 79 INTERCHANGE PROJECT FUNDING AND COOPERATIVE AGREEMENT**

*Page 414*

***Overview***

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Approve the use of up to \$2,009,400 of Transportation Uniform Mitigation Fee (TUMF) Regional Arterial funds for the project initiation document (PID) phase of the Interstate 10 / State Route 79 (I-10 / SR-79) Interchange Project (Project);
- 2) Approve Cooperative Agreement No. 25-72-064-00 with the city of Beaumont for the I-10 / SR-79 Interchange Project PID phase; and
- 3) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement on behalf of the Commission.

**10. MEASURE A SPECIALIZED TRANSIT AWARD RECOMMENDATIONS FOR FISCAL YEARS 2024/25 – 2026/27 - AMENDMENT 2**

*Page 426*

***Overview***

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Approve Amendment 2 with additional awards totaling \$286,992 for the Western Riverside County Measure A Specialized Transit Program Fiscal Years (FY) 2024/25 – 2026/27 Call for Projects, for a total amount of \$11,210,587;
- 2) Approve Amendment No. 1 to Agreement No. 24-26-114-00 with Operation SafeHouse for an additional amount of \$44,297 for Operating from Measure A Specialized Transit funds, for a total not to exceed contract amount of \$195,738;

- 3) Approve Amendment No. 1 to Agreement No. 24-26-106-00 with Angel View, Inc. for an additional amount of \$40,450 for Operating from Measure A Specialized Transit funds, for a total not to exceed contract amount of \$270,417;
- 4) Approve Amendment No. 1 to Agreement No. 24-26-113-00 with Michelle's Place Cancer Resource Center (Michelle's Place) for an additional amount of \$68,805 for Operating from Measure A Specialized Transit funds, for a total not to exceed contract amount of \$146,085;
- 5) Approve Amendment No. 1 to Agreement No. 24-26-112-00 with Independent Living Partnership (ILP) for an additional amount of \$33,440 for Capital from Measure A Specialized Transit funds, for a total not to exceed contract amount of \$1,820,181;
- 6) Approve Amendment No. 1 to Agreement No. 24-26-128-00 with Forest Folk, Inc. (Forest Folk) for an additional amount of \$100,000 for a replacement vehicle from Measure A Specialized Transit funds, for a total not to exceed contract amount of \$441,389; and
- 7) Authorize the Chair or Executive Director to execute the agreements with the award recipients, pursuant to legal counsel review.

**11. ELECTION OF OFFICERS FOR THE WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE**

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***Overview***

This item is for the Committee to:

- 1) Conduct an election of officers for 2025 – Chair and Vice Chair.

**12. EXECUTIVE DIRECTOR REPORT**

**13. COMMISSIONER COMMENTS**

***Overview***

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

**14. ADJOURNMENT**

The next Western Riverside County Programs and Projects Committee meeting is scheduled to be held at **1:30 p.m., Monday, March 24, 2025.**





# **AGENDA ITEM 6A**

## **MINUTES**



# **RIVERSIDE COUNTY TRANSPORTATION COMMISSION**

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

Monday, September 23, 2024

### **MINUTES**

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

The meeting of the Western Riverside County Programs and Projects Committee was called to order by Chair Wes Speake at 1:30 p.m. in the Board Room located at 4080 Lemon Street, Riverside, CA 92501. Additional teleconference site: Large Conference Room, French Valley Airport, 37600 Sky Canyon Drive, Murrieta, CA.

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

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

Chuck Conder\*  
Berwin Hanna  
Kevin Jeffries  
Malcolm Lilienthal\*\*  
Clint Lorimore  
Joseph Morabito  
Wes Speake  
Karen Spiegel  
Bill Zimmerman\*\*

##### **Members Absent**

Brian Berkson  
Albert Sanchez  
Michael Vargas

\*Arrived after the meeting was called to order.

\*\*Joined the meeting at French Valley.

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

Commissioner Karen Spiegel 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 (Jeffries/Lorimore) to approve the following Consent Calendar item(s):**

At this time, Commissioner Chuck Conder joined the meeting.

**6A. APPROVAL OF MINUTES – AUGUST 26, 2024**

**7. CONTRACTS AND COOPERATIVE AGREEMENTS FOR THE WILDOMAR TRAIL AND BUNDY CANYON ROAD INTERCHANGE IMPROVEMENT PROJECTS**

David Lewis, Capital Projects Manager, presented the Interstate 15 Bundy Canyon Road and I-15 Wildomar Trail Interchange Improvement Projects including the agreements for the projects, highlighting the following:

- Project background
- Project locations
- Project study reports (PSRs) procurement process
- PSR contracts
- Caltrans cooperative agreements
- Fiscal impact

In response to Commissioner Karen Spiegel's request to provide more details on the Caltrans' agreements, David Lewis replied Caltrans requires one cooperative agreement for each project, he then explained what Caltrans' services entails for those agreements.

In response to Commissioner Spiegel's question that is more than a third of the project, David Lewis replied correct, and discussed Caltrans' terms for the initial deposit, how staff will monitor and track it monthly, and how usually some of the money is returned after the PSR is completed.

In response to Commissioner Spiegel's question, David Lewis replied they have monthly project delivery team (PDT) meetings for both projects so that involves all the Caltrans technical staff attending the meetings, reviewing reports, providing comments, and finally approving the PSR.

In response to Commissioner Spiegel's clarification that they are paying to get it approved and if they do not pay it, it will not get approved, David Lewis replied they will not get Caltrans participation in that phase.

Vice Chair Joseph Morabito appreciated Commissioner Spiegel's comments because it is Caltrans' rules, therefore the Commission has to do that so aside from that part they are excited to move this to the next step. He then made the motion to approve staff recommendation.

**M/S/C (Morabito/Hanna) for the Committee to recommend the Commission take the following action(s):**

- 1) **Award Agreement No. 25-72-015-00 between the Commission and HDR Engineering for completion of a project study report for the Wildomar Trail Interchange improvement project in the amount of \$851,324, plus a contingency amount of \$85,132, for a total amount not to exceed \$936,456;**
- 2) **Award Agreement No. 25-72-017-00 between the Commission and HDR Engineering for completion of a project study report for the Bundy Canyon Road Interchange improvement project in the amount of \$750,163, plus a contingency amount of \$75,016, for a total amount not to exceed \$825,179;**
- 3) **Approve Cooperative Agreement No. 25-72-016-00 between the Commission and Caltrans for project review and oversight services for the Wildomar Trail Interchange improvement project, in the amount of \$300,000;**
- 4) **Approve Cooperative Agreement No. 25-72-018-00 between the Commission and Caltrans for project review and oversight services for the Bundy Canyon Road Interchange improvement project, in the amount of \$300,000; and**
- 5) **Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement on behalf of the Commission.**

Chair Speake announced he has a conflict on Agenda Item 8, *“On-Call Design Engineering and Environmental Services for the Construction of Commuter Rail Station Capital Improvement Projects”* he works for one of the firms being awarded and stepped out of the board room.

At this time, Vice Chair Morabito took over as chair.

**8. ON-CALL DESIGN ENGINEERING AND ENVIRONMENTAL SERVICES FOR THE CONSTRUCTION OF COMMUTER RAIL STATION CAPITAL IMPROVEMENT PROJECTS**

David Lewis presented the on-call design engineering and environmental services for the construction of Commuter Rail station Capital Improvement Projects agreements, highlighting the following:

- Background
- Procurement process
- Task order process

Commissioner Kevin Jeffries stated there is no indication of what any of these projects maybe, there are no specifics and why can they not see what staff envisions.

David Lewis replied they left it vague just to give staff a little more lead way on projects coming down the pipeline. The Mead Valley station is one that RCTC will probably initiate through that task order next year and they will look at the long range plans they currently

have and any of those projects that might come about. The last three-year term contract had expired, and staff wanted to solicit new consultants.

Commissioner Jeffries stated that changing consultants is probably a good thing but not letting the Commissioners know what this might be used for is counterproductive.

Aaron Hake, Executive Director, stated the Commission has an established practice of creating benches like this for different services to streamline the procurement process and explained how staff qualifies which consultant will be used for a particular area of work, having the ability to issue a task order in a shorter turnaround time, how it remains on a competitive basis, and that it adheres to the public contract code procurement requirements.

Commissioner Jeffries appreciated the comment it just seems so vague. While advocating for the Mead Valley train facility was expected, when the trains go by in and out of Perris, they are almost completely empty everyday every hour they pass by and asked if the Commission is going to find a way to get people to ride the trains.

Aaron Hake replied they are doing a couple of things the Commission is currently double tracking the Perris Valley Line most of the line is single track so that limits their capacity to run trains on a more frequent basis. If they do not have the frequency of trains and convenience of the service people will not ride it but if they wait until people ride it they will not build it and they currently have grant money to build the double track, to do the upgrades at the Moreno Valley March Field station, and applying for state funds to do the Mead Valley station as the state is very interested in transit. The Commission will have to monitor and be mindful as they add to their capital inventory with these grants since they will have capital maintenance costs that will go on into the future.

Commissioner Jeffries stated their population center is obviously the Moreno Valley and or the Perris city end and when their ridership is near zero for those existing population centers it would be hard in the private sector to justify spending millions of dollars for another train station that has less population then the two bigger ones on each end that do not get any riders, but he understands the argument on everything else.

Commissioner Spiegel asked how they are throwing money away because the money goes in a pot that they could pay them, but they are not giving the money up front.

Commissioner Jeffries clarified he means build a station that nobody is going to stand in not the engineering side of it.

Commissioner Spiegel replied yes that is a discussion they have been having at Metrolink and Aaron Hake is aware they are changing schedules to which they are getting quite a bit of push back.

David Lewis replied to Commissioner Jeffries that one good example is the Palo Verde Valley Transit Agency (PVVTA) Transit Facility project that came onboard to RCTC, so they had to adjust quickly and get the on-call contract out.

Commissioner Jeffries replied once staff explained it, he understood it.

David Lewis replied staff will do a better job at including possible future projects.

**M/S/C (Jeffries/Hanna) for the Committee to recommend the Commission take the following action(s):**

- 1) Award the following agreements to provide on-call design engineering and environmental services for the construction of commuter rail station capital improvement projects for a three-year term, and one two-year option to extend the agreement, in an amount not to exceed an aggregate value of \$12,000,000;**
    - a) Agreement No. 24-33-097-00 Moffat & Nichol;**
    - b) Agreement No. 24-33-130-00 HDR Engineering, Inc.;**
    - c) Agreement No. 24-33-131-00 HNTB Corporation;**
    - d) Agreement No. 24-33-132-00 WSP USA Inc.;**
  - 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements, including option years, on behalf of the Commission; and**
  - 3) Authorize the Executive Director, or designee, to execute task orders awarded to the consultants under the terms of the agreements.**
- Speake: Abstained**

At this time, Chair Speake rejoined the meeting and took over as the chair.

**9. AGREEMENT FOR CLOSED CIRCUIT TELEVISION SYSTEM MAINTENANCE/REPAIR AND INSTALLATION SERVICES FOR RCTC RAIL STATIONS**

**M/S/C (Jeffries/Morabito) for the Committee to recommend the Commission take the following action(s):**

- 1) Approve Agreement No. 24-24-097-00 with American System Integrators, Inc. to provide closed circuit television (CCTV) system maintenance/repair and installation services for a three-year base period plus two, one-year options to extend the agreement for a total period of performance of up to five years for a total amount not to exceed \$4,953,600; and**
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to finalize and execute the agreement, on behalf of the Commission.**

**10. EXECUTIVE DIRECTOR REPORT**

There were no reports from the Executive Director.

**11. COMMISSIONER COMMENTS**

**11A.** Vice Chair Morabito announced on September 26 it is Wildomar's State of the City and to join if they can.

**12. ADJOURNMENT**

There being no further business for consideration by the Western Riverside County Programs and Projects Committee, the meeting was adjourned at 1:53 p.m.

Respectfully submitted,



Tara S. Byerly  
Deputy Clerk of the Board



# **AGENDA ITEM 6B**



**RIVERSIDE COUNTY TRANSPORTATION COMMISSION**

<b>DATE:</b>	February 24, 2025
<b>TO:</b>	Western Riverside County Programs and Projects Committee
<b>FROM:</b>	Paul Mim Mack, Senior Management Analyst
<b>THROUGH:</b>	Hector Casillas, Right of Way Manager
<b>SUBJECT:</b>	Agreements for On-Call Right of Way Appraisal and Appraisal Review Services

**STAFF RECOMMENDATION:**

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Award the following agreements to provide on-call right of way appraisal and appraisal review services for a three-year base period, with two, one-year options to extend the agreements for a total period of performance of up to five years, in an amount not to exceed an aggregate value of \$1,285,000;
  - a) Agreement No. 25-31-008-00 with Bender Rosenthal, Inc;
  - b) Agreement No. 25-31-046-00 with CBRE, Inc;
  - c) Agreement No. 25-31-047-00 with Hawran & Malm, LLC;
  - d) Agreement No. 25-31-048-00 with R.P. Laurain & Associates, Inc.; and
  - e) Agreement No. 25-31-049-00 with Riggs & Riggs, Inc;
  - f) Agreement No. 25-31-050-00 with Thompson & Thompson Real Estate Valuation and Consulting, Inc.;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements, on behalf of the Commission; and
- 3) Authorize the Executive Director, or designee, to execute task orders awarded to the consultants under the terms of the agreements.

**BACKGROUND INFORMATION:**

Right of way appraisal services are necessary to support the Right of Way department's Commission projects, future Measure A highway and rail projects, as well as projects for the Western Riverside County Regional Conservation Authority (RCA), for which the Commission is the managing agency as of January 1, 2021.

Federal and state regulations require that before the initiation of negotiations with property owners, the public agency shall establish an amount that believes is just compensation and/or the fair market value for the property. To comply with regulations, the Commission can either hire staff appraisers or establish a list of on-call appraisers. Staff recommends the latter.

To meet project schedules, control costs, and assure compliance with federal and state regulations and requirements related to right of way acquisition, staff recommends awarding contracts for on-call appraisal services with the work to be issued on an as-needed task order basis. Due to the amount of potential appraisal services required, staff determined an award to several firms was in the Commission's best interest.

### **Procurement Process**


Staff determined the weighted factor method of source selection to be the most appropriate for this procurement, as it allows the Commission to identify the most advantageous proposal with price and other factors considered. Non-price factors include elements such as qualifications of firm and personnel and understanding and approach for on-call right of way appraisal services as set forth under the terms of Request for Proposals (RFP) No. 25-31-008-00.

RFP No. 25-31-008-00 for on-call right of way appraisal and appraisal review services was released by staff on October 24, 2024. The RFP was posted on the Commission's PlanetBids website, which is accessible through the Commission's website. Through PlanetBids, 26 firms downloaded the RFP; 13 of these firms are located in Riverside County. Staff responded to all questions submitted by potential proposers prior to the November 14, 2024, clarification deadline. Nine firms – BBG Inc. (Detroit, MI); Bender Rosenthal, Inc. (Sacramento); CBRE, Inc. (Woodland Hills); Curtis Rosenthal Inc. (Los Angeles); Hawran & Malm, LLC (Newport Beach); R.P. Laurain & Associates, Inc. (Long Beach); Riggs & Riggs, Inc. (Simi Valley); Santolucito Dorè Group, Inc. (Canyon Lake); and Thompson & Thompson Real Estate Valuation and Consulting, Inc. (Monrovia) – submitted responsive and responsible proposals prior to the 2:00 p.m. submittal deadline on December 5, 2024. Based on the evaluation criteria set forth in the RFP, the firms were evaluated and scored by an evaluation committee comprised of Commission staff.

As a result of the evaluation committee's assessment of the written proposals, the evaluation committee determined six firms – Bender Rosenthal, Inc.; CBRE, Inc.; Hawran & Malm, LLC; R.P. Laurain & Associates, Inc.; Riggs & Riggs, Inc., and Thompson & Thompson Real Estate Valuation and Consulting, Inc. – to be the most qualified firms to provide on-call right of way appraisal and appraisal review services. The evaluation committee recommends contract awards to these six firms for a three-year base period, with two, one-year options to extend the agreements for a total period of performance of up to five years, in the aggregate amount of \$1,285,000 as these firms earned the highest total evaluation scores.

The multiple award, on-call, indefinite delivery/indefinite quantity task order type contracts do not guarantee work to any of the awardees; therefore, no funds are guaranteed to any consultant. Pre-qualified consultants will be selected for specific tasks based on qualification information contained in their proposals and/or competitive fee proposals for the specific tasks. Services will be provided through the Commission's issuance of contract task orders to the consultants on an as-needed basis.

The Commission’s model on-call professional services agreement will be entered into with each consultant firm, subject to any changes approved by the Executive Director, pursuant to legal counsel review. Staff oversight of the contracts and task orders will maximize the effectiveness of the consultants and minimize costs to the Commission.

Financial Information					
In Fiscal Year Budget:	Yes	Year:	FY 2024/25 FY 2025/26+	Amount:	\$50,000 \$1,235,000
Source of Funds:	2009 Measure A, State Transportation Improvement Program, various Federal, and Transportation Uniform Mitigation Fees, RCA reimbursements			Budget Adjustment:	No
GL/Project Accounting No.:	623999 81403 00014 0000 262 31 81402 654199 81403 00014 0000 265 33 81402 R22001 81403 00014 0000 750 68 81402				
Fiscal Procedures Approved:				Date:	02/13/2025

Attachments:

- 1) Draft On-Call Professional Services Agreement 25-31-008-00 with Bender Rosenthal, Inc.
- 2) Draft On-Call Professional Services Agreement 25-31-046-00 with CBRE, Inc.
- 3) Draft On-Call Professional Services Agreement 25-31-047-00 with Hawran & Malm, LLC
- 4) Draft On-Call Professional Services Agreement 25-31-048-00 with R.P. Laurain & Associates, Inc.
- 5) Draft On-Call Professional Services Agreement 25-31-049-00 with Riggs & Riggs, Inc.
- 6) Draft On-Call Professional Services Agreement 25-31-050-00 with Thompson & Thompson Real Estate Valuation and Consulting, Inc.



## Agreement No. 25-31-008-00

**PROFESSIONAL SERVICES AGREEMENT  
WITH FHWA AND STATE FUNDING ASSISTANCE**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
BENDER ROSENTHAL, INC.  
FOR ON-CALL  
RIGHT OF WAY APPRAISAL AND  
APPRAISAL REVIEW SERVICES**

**Parties and Date.**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2025, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and BENDER ROSENTHAL, INC. ("Consultant"), a CORPORATION. The Commission and Consultant are sometimes referred to herein individually as "Party", and collectively as the "Parties".

**Recitals.**

A. 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").

B. 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.

C. 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.

D. The Western Riverside County Regional Conservation Authority ("RCA") is a Joint Powers Authority ("JPA") comprised of the County and eighteen cities in the western portion of the County.

E. Pursuant to an Implementation and Management Services Agreement between the Commission and RCA, the Commission provides management services on behalf of RCA, and may contract with consultants to provide services for RCA.

F. The sources of funding for payment for on-call professional consulting services provided under this Agreement may include the following funding sources:

Measure A, State Transportation Improvement Program,  
Federal Highway Administration (FHWA), Federal Transit

Administration (FTA), Transportation Uniform Mitigation Fees, or RCA reimbursements.

This Agreement shall not be deemed to be approved by the Commission until the certifications shown in Exhibit "E" attached hereto and incorporated herein by reference, is executed. Consultant shall comply with all funding source requirements as further set forth in this Agreement and the attached exhibits.

G. Consultant desires to perform and assume responsibility for the provision of certain on-call right of way appraisal and appraisal review services for projects in the County of Riverside, California. Services shall be provided for the Commission or for the benefit of RCA, as directed, on the terms and conditions set forth in this Agreement and in the task order(s) to be solicited, awarded and authorized by Commission as further described in this Agreement ("Task Order"). Consultant represents that it is experienced in providing such services to public clients, is licensed in the State of California (if necessary), and is familiar with the plans of the Commission.

H. Commission desires to engage Consultant to render such services on an on-call basis. Services shall be ordered by Task Order(s) to be issued pursuant to this Agreement for future projects as set forth herein and in each Task Order (each such project shall be designated a "Project" under this Agreement).

## **Terms.**

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 on-call right of way appraisal and appraisal review services for the Projects ("Services"). The Services are generally described in Exhibit "A" attached hereto and incorporated herein by reference. The Services shall be more particularly described in the individual Task Orders issued by the Commission's Executive Director or designee. No Services shall be performed unless authorized by a Task Order. All Services shall be subject to, and performed in accordance with, this Agreement, the relevant Task Order, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

2. Task Orders; Commencement of Services; Schedule of Services. Services under this Agreement shall be requested by the Commission pursuant to Task Order requests. If Commission accepts Consultant's Task Order proposal, Commission shall issue a purchase order or executed task order for the Services ("Commission's Task Order Authorization"). Consultant's agreement to the final terms of a proposed Task Order, Commission's Task Order Authorization and Consultant's commencement of the Services shall indicate the Parties' agreement to the terms of the relevant Task Order.

Consultant shall commence Services under a Task Order within five (5) days of receiving Commission's Task Order Authorization.



Consultant shall perform the Services expeditiously, in accordance with any schedule for the Services set forth in a Task Order (“Schedule of Services”). Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, Commission shall respond to Consultant's submittals in a timely manner. Upon request of the Commission, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

Task Orders may not be used to amend the language (or the terms) of this Agreement nor to exceed the scope of work under this Agreement.

3. Pre-Award Audit. As a result of the funding for this Project, and to the extent Caltrans procedures apply in connection therewith, issuance of a “Notice to Proceed” or other authorization to proceed under a Task Order may be contingent upon completion and approval of a pre-award audit. Any questions raised during the pre-award audit shall be resolved before Services are commenced under a Task Order. The funding provided under this Agreement is contingent on meeting all funding requirements and could be withdrawn, thereby entitling the Commission to terminate this Agreement, if the procedures are not completed. The Consultant's files shall be maintained in a manner to facilitate State process reviews. In addition, Caltrans may require that prior to performance of any work for which funding reimbursement through Caltrans is requested and provided, that Caltrans must give to Commission an “Authorization to Proceed”.

4. Audit Procedures.

4.1 Consultant and certain subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an Independent Cost Review (ICR) Audit, or a CPA ICR audit work paper review. If selected for audit or review, this Agreement, Consultant's cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. This Agreement, Consultant's cost proposal, and ICR shall be adjusted by Consultant and approved by the Commission's contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into this Agreement by this reference if directed by Commission at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of the Agreement terms and cause for termination of this Agreement and disallowance of prior reimbursed costs. Additional audit provisions applicable to this Agreement are set forth in Sections 22 and 23 of this Agreement.

Section 4.2 and 4.3 shall apply to the extent applicable to the Task Order and funding source.

4.2 During any Caltrans' review of the ICR audit work papers created by the Consultant's independent CPA (which may include review by the Independent Office of Audits and Investigations), Caltrans will work with the CPA and/or Consultant toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans identifies significant issues during the review and is unable to issue a cognizant approval letter, Commission will reimburse the Consultant at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines is received and approved by Caltrans.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
- b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
- c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.

4.3 If Caltrans is unable to issue a cognizant letter per Section 4.2 above, Caltrans may require Consultant to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the Caltrans' management letter. Caltrans will then have up to six (6) months to review the Consultant's and/or the independent CPA's revisions.

If the Consultant fails to comply with the provisions of this Section 4, or if Caltrans is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in Section 4.2 above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this Agreement.

Consultant may submit to Commission final invoice only when all of the following items have occurred: (1) Caltrans accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this Agreement has been completed to the satisfaction of Commission; and, (3) Caltrans has issued its final ICR review letter. The Consultant must submit its final invoice to Commission no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this Agreement and all Task Orders issued under this Agreement, and all other agreements executed between the Commission and the Consultant, either as a prime or subconsultant, with the same fiscal period ICR.

5. Term.

5.1 This Agreement shall go into effect on the date first set forth above, contingent upon approval by Commission, and shall remain in effect for three (3) years, unless extended by contract amendment. The Commission may extend the term of this Agreement, in its sole discretion, for two (2) additional one (1) year period(s). The maximum term of this Agreement, including all option terms, shall not exceed five (5) years. No Task Order shall extend beyond the expiration date of this Agreement.

5.2 Consultant is advised that any recommendation for contract award is not binding on Commission until this Agreement is fully executed and approved by the Commission.

5.3 This Agreement shall remain in effect until the date set forth above, 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.

6. Commission's Contract Administrator. The Commission hereby designates the Commission's Executive Director, or his or her designee, to act as its Contract Administrator for the performance of this Agreement ("Commission's Contract Administrator"). Commission's Contract Administrator shall have the authority to act on behalf of the Commission for all purposes under this Agreement. Commission's Contract Administrator 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 Contract Administrator or his or her designee.

7. Consultant's Representative. Consultant hereby designates **Dave Houghton, Appraisal Manager** 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 or her 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 Contract Administrator 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 Contract Administrator.

8. 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 herein. The key personnel for performance of this Agreement are: **David Houghton, Appraisal Manager and Angela Hernandez, Lead Appraiser**, or as otherwise identified in the Task Order.

9. Standard of Care; License. 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 and RCA 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.

10. 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. Consultant hereby indemnifies and holds the Commission and RCA harmless, pursuant to the indemnification provisions contained in this Agreement, from any and all claims that may be made against the Commission based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

## 11. Project Progress.

11.1 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 Contract Administrator.

11.2 Trend Meetings. Consultant shall conduct trend meetings with the Commission's Contract Administrator 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.

11.3 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.

## 12. Delay in Performance.

12.1 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, pandemics, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather, performance of such act shall be excused for the period of such delay.

12.2 Written Notice. If Consultant believes it is entitled to an extension of time due to conditions set forth in subsection 12.1, 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.

12.3 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.

13. 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 Contract Administrator 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 Federal funding. In the event that Commission's Contract Administrator, in his or her sole discretion, determines the formally submitted work product to be not in accordance with the standard of care established under this Agreement, Commission's Contract Administrator may require Consultant to revise and resubmit the work at no cost to the Commission.

14. 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.

15. Opportunity to Cure; Inspection of Work. 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. Consultant shall allow the Commission's Contract Administrator and Caltrans to inspect or review Consultant's work in progress at any reasonable time.

16. Final Acceptance. Upon determination by the Commission that Consultant has satisfactorily completed the Services required under this Agreement and within the term set forth herein 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.

17. 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 the United States Department of Transportation. For example, and not by way of limitation, a signed Categorical Exclusion, Finding of No Significant Impact, or published Record of Decision may be required to be approved and/or completed by the United States Department of Transportation. For Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such 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, RCA and their 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.

## 18. Fees and Payment.

18.1 The method of payment for this Agreement will be based specific rates of compensation. Consultant will be reimbursed for hours worked at the hourly rates specified in the Consultant's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

18.2 In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order.

18.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's approved Cost Proposal.

18.4 Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. Consultant will be responsible for transportation and subsistence costs in excess of State rates.

18.5 When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

18.6 Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred. No payment will be made prior to approval or for any work performed prior to approval of this Agreement, or prior to issuance of a Task Order.

18.7 Consultant will be reimbursed within thirty (30) days upon approval by Commission's Contract Administrator of itemized invoices submitted by Consultant. Separate invoices itemizing all costs are required for all work performed under each Task

Order. Commission's Contract Administrator shall notify Consultant of any disputed items contained in an invoice, and payment for such items shall be withheld pending resolution of the Commission's concerns.

18.8 Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number.

Invoices shall be mailed to Commission's Contract Administrator at the following address:

Riverside County Transportation Commission  
Attention: Accounts Payable  
P.O. 12008  
Riverside, CA 92502

18.9 The total amount payable by Commission for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment. If Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

18.10 Commission has or will enter into six (6) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("On-Call Right of Way Contracts"). The other On-Call Right of Way Contracts are **CBRE, Inc., 25-31-046-00; Hawran & Malm, LLC., 25-31-047-00; R.P. Laurain & Associates, Inc., 25-31-048-00; Riggs & Riggs, Inc., 23-31-049-00, and Thompson and Thompson Real Estate Valuation and Consulting, Inc., 25-31-050-00**. The total amount payable by Commission for the On-Call Right of Way Contracts shall not exceed a cumulative maximum total value of Seven Hundred Seventy-One Thousand Dollars (\$771,000) ("NTE Sum"). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the On-Call Right of Way Contracts through Task Orders. Each time a Task Order is awarded under any of the On-Call Right of Way Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the On-Call Right of Way Contracts. The notice must identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Commission must not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant must not enter into a Task Order that exceeds the NTE Sum.

18.11 All subcontracts in excess of \$25,000 shall contain the above provisions.



19. Disputes.

19.1 Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by mutual agreement of the Parties shall be decided by a committee consisting of RCTC's Contract Administrator and the Director of Capital Projects, who may consider written or verbal information submitted by Consultant.

19.2 Not later than 30 days after completion of all Services under this Agreement, Consultant may request review by the Commission's Executive Director of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

19.3 Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this Agreement.

20. Termination; Suspension.

20.1 Commission reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant, for any or no reason, with the reasons for termination stated in the notice. Commission may terminate Services under a Task Order, at any time, for any or no reason, with the effective date of termination to be specified in the notice of termination of Task Order.

20.2 Commission may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, Commission may proceed with the Services in any manner deemed proper by Commission. If Commission terminates this Agreement with Consultant, Commission shall pay Consultant the sum due to Consultant under this Agreement for Services completed and accepted prior to termination, unless the cost of completion to Commission exceeds the funds remaining in the Agreement. In such case, the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

20.3 In addition to the above, payment upon termination 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 Contract Administrator 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

20.4 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.

20.5 In addition to the above, 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 this Agreement. Termination of this Agreement for cause may be considered by the Commission in determining whether to enter into future agreements with Consultant.

20.6 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.

20.7 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.

20.8 Consultant may not terminate this Agreement except for cause.

21.9 In addition to the termination rights above, Commission may temporarily suspend this Agreement or Services under any Task Order, at no additional cost to Commission, provided that Consultant is given written notice of temporary suspension. If Commission gives such notice of temporary suspension, Consultant shall immediately suspend its activities under the relevant Task Order(s). A temporary suspension may be issued concurrent with a notice of termination.

## 21. Cost Principles and Administrative Requirements.

21.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

21.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

21.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to Commission.

21.4 All subcontracts in excess of \$25,000 shall contain the above provisions.

22. Retention of Records/Audit. For the purpose of determining compliance with, as applicable, 2 CFR Part 200, Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and

other matters connected with the performance of this Agreement pursuant to Government Code 8546.7; Consultant, subconsultants, and Commission shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering this Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under this Agreement. The State, State Auditor, Commission, or any duly authorized representative of the State or Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to this Agreement and, if applicable, indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

22.1 Accounting System. Consultant 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 Consultant 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.

23. Audit Review Procedures.

23.1 Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by Commission's Chief Financial Officer.

23.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by Commission's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

23.3 Neither the pendency of a dispute nor its consideration by Commission shall excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.

24. Subcontracting.

24.1 Nothing contained in this Agreement or otherwise, shall create any contractual relation between Commission and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to Commission and RCA for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from Commission's obligation to make payments to the Consultant.

24.2 Consultant shall perform the Services contemplated with resources available within its own organization and no portion of the Services pertinent to this Agreement shall be subcontracted without written authorization by Commission's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

24.3 Consultant shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to Consultant by Commission.

24.4 Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.

24.5 Any substitution of subconsultant(s) must be approved in writing by Commission's Contract Administrator prior to the start of work by the subconsultant(s).

24.6 Exhibit "B" may set forth the rates at which each subconsultant shall bill the Consultant for Services and that are subject to reimbursement by the Commission to Consultant. Additional Direct Costs, as defined in Exhibit "B" shall be the same for both the Consultant and all subconsultants, unless otherwise identified in Exhibit "B" or in a Task Order. The subconsultant rate schedules and cost proposals contained herein are for accounting purposes only.

## 25. Equipment Purchase

25.1 Prior authorization, in writing, by Commission's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract for supplies, equipment, or services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

25.2 For purchase of any item, service or consulting work not covered in the Cost Proposal and exceeding \$5,000 prior authorization, in writing, by Commission's Contract Administrator is required. Three competitive quotations must be submitted with the request for such purchase, or the absence of bidding must be adequately justified.

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

terms and conditions of such sale must be approved in advance by Commission. 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the Project.

25.4 All subcontracts in excess \$25,000 shall contain the above provisions.

26. Labor Code Requirements.

26.1 Prevailing Wages.

(a) If applicable, Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the Services.

(b) When prevailing wages apply to the Services described in the Scope of Services, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

(c) Copies of the prevailing rate of per diem wages in effect at commencement of this Agreement 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, RCA and their 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.

26.2 DIR Registration. If the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

26.3 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 Consultant or the Services are not subject to the Eight-Hour Law. Consultant shall forfeit to Commission 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 Consultant or the Services are not subject to the Eight-Hour Law.

26.4 Employment of Apprentices. This Agreement shall not prevent the employment of properly indentured apprentices in accordance with the California Labor Code, and no employer or labor union shall refuse to accept otherwise qualified employees as indentured apprentices on the work performed hereunder solely on the ground of race, creed, national origin, ancestry, color or sex. Every qualified apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which he or she is employed and shall be employed only in the craft or trade to which he or she is registered.

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

The parties expressly understand that the responsibility for compliance with provisions of this Section and with Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code in regard to all apprenticeable occupations lies with Consultant

27. Ownership of Materials/Confidentiality.

27.1 Documents & Data. This Agreement creates an exclusive and perpetual license for Commission and RCA 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 and RCA are 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 or RCA.

Commission and RCA 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 and RCA's sole risk.

27.2 Intellectual Property. In addition, Commission and RCA 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 and RCA 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.

27.3 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 or RCA'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.

27.4 Infringement Indemnification. Consultant shall defend, indemnify and hold the Commission, RCA, their directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by Commission or RCA of the Documents & Data, including any method, process, product, or concept specified or depicted.

28. Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold Commission, RCA, Caltrans and their 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, inverse condemnation, and any claims related to property acquisition and relocation rules or failure to detect or abate hazardous materials, which are brought by a third party, and which, in any manner arise out of or are 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, RCA, Caltrans, and their directors, officials, officers, employees, consultants, agents, or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Commission, RCA, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission, RCA, Caltrans and their 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, RCA, Caltrans or their directors, officials officers, employees, consultants, agents, or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful



misconduct of the Consultant and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

## 29. Insurance.

29.1 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 a form and with insurance companies acceptable to the Commission. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this Section.

29.2 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 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. Consultant shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit. Limits may be achieved by any combination of primary and excess or umbrella liability insurance; (2) *Automobile Liability*: \$2,000,000 per accident for bodily injury and property damage. Limits may be achieved by any combination of primary and excess or umbrella liability insurance; and (3) *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.

29.3 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. For Consultant, such insurance shall be in an amount not less than \$2,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically

designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. Subconsultants of Consultant shall obtain such insurance in an amount not less than \$1,000,000 per claim. Notwithstanding the foregoing, the Commission may consider written requests to lower or dispense with the errors and omissions liability insurance requirement contained in this Section for certain subconsultants of Consultant, on a case-by-case basis, depending on the nature and scope of the Services to be provided by the subconsultant. Approval of such request shall be in writing, signed by the Commission's Contract Administrator.

29.4 Aircraft Liability Insurance. Prior to conducting any Services requiring use of aircraft, Consultant shall procure and maintain, or cause to be procured and maintained, aircraft liability insurance or equivalent form, with a single limit as shall be required by the Commission. Such insurance shall include coverage for owned, hired and non-owned aircraft and passengers, and shall name, or be endorsed to name, the Commission, Caltrans and their directors, officials, officers, employees and agents as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant.

29.5 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) 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 the Commission, RCA, 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 the Commission's,

RCA's 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) the Commission, RCA, 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 Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Commission, RCA, Caltrans and their 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, RCA, Caltrans and their 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.

(c) Workers' Compensation and Employers Liability Coverage.

(i) Consultant 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 the Commission, RCA, Caltrans and their 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.

(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 the Commission, RCA, Caltrans and their 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 the Commission. 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) Consultant shall provide the Commission at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant 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 Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the Commission 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. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant 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 Consultant, and any approval of said insurance by the Commission, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant 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, Commission has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Commission will be promptly reimbursed by Consultant or Commission will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Commission may cancel this Agreement. The Commission may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(viii) Neither the Commission, RCA 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.

29.6 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, RCA, their 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 expense.

29.7 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.

29.8 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.

29.9 Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the Commission that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the Commission as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, the Commission may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

29.10 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.

30. 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.

31. 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, other than a Cardinal Change. For purposes of this Agreement, a Cardinal Change is a change which is "outside the scope" of the Agreement; in other words, work which should not be regarded as having been fairly and reasonably within the contemplation of the parties when the Agreement was entered into. An example of a change which is not a Cardinal Change would be where, in a contract to construct a building there are many changes in the materials used, but the size and layout of the building remains the same. Cardinal Changes are not within the authority of this provision to order, and shall be processed by the Commission as "sole source" procurements according to applicable law, including the requirements of FTA Circular 4220.1D, paragraph 9(f).

(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.

## 32. Prohibited Interests.

32.1 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.

## 32.2 Consultant Conflict of Interest.

(a) Consultant shall disclose any financial, business, or other relationship with Commission that may have an impact upon the outcome of this Agreement. Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

(b) Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

32.3 Commission 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.

32.4 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.

32.5 Covenant Against Contingent Fees. As required in connection with federal funding, the Consultant 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 the terms herein, 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.

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

32.7 Covenant Against Expenditure of Commission, State or Federal Funds for Lobbying. The Consultant certifies that to the best of his/ her knowledge and belief no state, federal or local agency appropriated funds have been paid, or will be paid by or on behalf of the Consultant to any person for the purpose of influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the award of any state or federal contract, grant, loan, or cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

(a) If any funds other than federal appropriated funds have been paid, or will be paid to any person for the purpose of influencing or attempting to influence

an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this Agreement, the Consultant shall complete and submit the attached Exhibit "F", Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with the attached instructions.

(b) The Consultant's certification provided in this Section is a material representation of fact upon which reliance was placed when this Agreement was entered into, and is a prerequisite for entering into this Agreement pursuant to Section 1352, Title 31, US. Code. Failure to comply with the restrictions on expenditures, or the disclosure and certification requirements set forth in Section 1352, Title 31, US. Code may result in a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) The Consultant also agrees by signing this Agreement that he/she shall require that the language set forth in this Section be included in all Consultant subcontracts which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

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

33. 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.

34. Right to Employ Other Consultants. Commission and RCA reserve the right to employ other consultants in connection with the Project.

35. Governing Law. This Agreement shall be governed by and construed with the laws of the State of California. Venue shall be in Riverside County.

36. Disputes; Attorneys' Fees.

36.1 Prior to commencing any action hereunder, the Parties shall attempt in good faith to resolve any dispute arising between them. The pendency of a dispute shall not excuse Consultant from full and timely performance of the Services.

36.2. If the Parties are unable to resolve a dispute after attempting in good faith to do so, the Parties may seek any other available remedy to resolve the dispute. 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.

37. Time of Essence. Time is of the essence for each and every provision of this Agreement.

38. 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.

39. 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:**

Bender Rosenthal, Inc.  
2825 Watt Avenue  
Ste. 200  
Sacramento, CA 95821  
Attn: Dave Houghton

**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.

40. 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. Notwithstanding the foregoing, if any provision of this Agreement conflicts in any way with a state or federal requirement, as directed by the Commission (i) the state or federal requirement shall govern; or (ii) the more stringent requirement shall apply.

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

42. 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.

43. 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.

44. Provisions Applicable When State Funds or Federal Funds Are Involved. When funding for the Services under a Task Order is provided, in whole or in part, from Caltrans or other State funding source, Consultant shall also fully and adequately comply with the provisions included in Exhibit "C" (California Department of Transportation requirements) attached hereto and incorporated herein by reference. When funding for the Services under a Task Order is provided, in whole or in part, from the FHWA, Consultant shall also fully and adequately comply with the provisions included in Exhibit "D" (FHWA Requirements) attached hereto and incorporated herein by reference. When funding for the Services under a Task Order is provided, in whole or in part, from the FTA, Consultant shall also fully and adequately comply with the provisions included in Exhibit "F" (FTA Requirements) attached hereto and incorporated herein by reference.

45. 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, shall survive any such expiration or termination.

46. No Third Party Beneficiaries. RCA and Caltrans are intended third party beneficiaries of any right or benefit granted to RCA or Caltrans, respectively, under this Agreement. Except as set forth in the foregoing sentence, there are no other intended third party beneficiaries of any right or obligation assumed by the Parties.

47. Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

48. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

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

50. 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.

51. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties, and shall not be assigned by Consultant without the prior written consent of Commission.

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

53. 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.

55. Electronically Transmitted Signatures; Electronic Signatures. 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 this Agreement for all purposes. This Agreement may be signed using an electronic signature.

**[Signatures on following page]**

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**SIGNATURE PAGE  
TO  
PROFESSIONAL SERVICES AGREEMENT  
WITH STATE AND FHWA FUNDING/ASSISTANCE**

**ON CALL RIGHT OF WAY APPRAISAL AND APPRAISAL REVIEW SERVICES**

**IN WITNESS WHEREOF**, this Agreement was executed on the date first written above.

<p><b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b></p> <p>By: _____            <b>[INSERT NAME]</b>            Chair</p> <p><i>Approved as to Form:</i></p> <p>By: _____            Best, Best &amp; Krieger LLP            General Counsel</p>	<p><b>CONSULTANT BENDER ROSENTHAL, INC.</b></p> <p>By: _____            Signature</p> <p>_____</p> <p>          Name</p> <p>_____</p> <p>          Title</p> <p><b>ATTEST:</b></p> <p>By: _____</p> <p>Its: _____</p>
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\* 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.

**EXHIBIT "A"  
SCOPE OF SERVICES**

**[attached behind this page]**

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**EXHIBIT A-1**  
**SCOPE OF SERVICES**  
**RIGHT OF WAY APPRAISAL SERVICES**

The Riverside County Transportation Commission (Commission) has selected Consultant (Consultant or Appraiser) as part of an on-call bench of firms engaged to provide right of way appraisal services for developed or undeveloped residential, commercial, industrial, agricultural and railroad properties. Consultant shall produce appraisal reports for full or partial acquisitions, easements, temporary construction easements, leased or licensed properties, and sale or disposition of excess/surplus properties, as required by the Commission. Services shall be provided on an oncall/ as needed basis in support of current and future Commission Projects, Measure A Projects and projects done in partnership with other agencies, pursuant to Task Orders issued in the sole discretion of the Commission.

Task Orders shall be awarded through an additional qualification-based selection process.

Such appraisal services may include, but are not limited to, the following work program and must comply with the requirements below, as applicable:

1. Consultant shall prepare appraisals in accordance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and implemented by 49 CFR Part 24; the State of California Government Code, the State of California Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Code of Regulations Ch 6, Art 1, Section 6000 et seq.), the California Code of Civil Procedure, the Uniform Standards of Professional Appraisal Practice (USPAP), and in some cases, the Uniform Appraisal Standards for Federal Land Acquisition Act. Consultant must be licensed by the State of California.
2. Consultant shall prepare appraisals in accordance with the Uniform Appraisal Standards for Federal Land Acquisition ("Yellow Book"). Consultant must be

licensed by the State of California.

3. Consultant must be qualified to provide expert witness testimony and defend the opinions or conclusions reached in the appraisal at any Administrative or Judicial proceeding.

4. Deliverables shall typically consist of three (3) originals of the completed appraisal report and one (1) electronic copy, specialty reports and component valuations which may be performed by someone other than Consultant and incorporated into the overall fair market valuation.

5. Consultant may be required to meet with and coordinate their efforts with Commission staff, Commission legal counsel, and other consultants or Caltrans staff; participate in office or project site meetings.

6. Appraisal reports may be reviewed for acceptance and approval by Commission's review appraisers and Caltrans. Revisions may be required by reason of this review process. Consultants may be requested to complete and deliver revised and/or updated appraisals. In the event of non-acceptance due to errors or omissions, Consultant shall have fifteen (15) calendar days to make corrections and return the revised appraisals to the review appraiser.

7. For proposed acquisitions, the owner of the real property or a designated representative will be invited by the Appraiser to accompany the Appraiser during the inspection of the property. This invitation must be in the form of a letter entitled "Notice to Appraise" written by the Appraiser to the owner. A copy of the invitation will be included in the appraisal report.

8. It is the Appraiser's responsibility to contact the Commission's project engineers for discussion and/or clarification of the Construction in the Manner Proposed. This is critical in the appraisal of partial acquisitions and easements where the Appraiser may need cross sections or other project engineering information to complete the report.

9. The highest and best use for the property in the before condition must be determined and supported. If a partial acquisition is involved, the highest and best use of the property in the after condition must be determined and

supported. If the existing use is not the premise on which the valuation is based, the appraisal will contain an explanation justifying the determination that the property is available and adaptable for a different highest and best use and there is demand for that use in the market.

10. Where the acquisition involves only a part (or portion) of the property, the Appraiser will estimate any severance damages and special benefits to the remainder, including reasoning and market data to support the opinion or conclusion. The Appraiser will indicate if the remainder constitutes an economic or uneconomic unit in the market and/or to the present owner.

11. The California Eminent Domain Law will be followed in partial acquisitions. Special benefits are to be offset only against damages to the remainder in accordance with the law.

12. Appraisal for easement acquisitions will reflect the restrictive elements of the easement to be acquired and the potential effect of such elements on the utility of the property considering its highest and best use. Full details with respect to any interference with the highest and best use of the property affected must be explained and supported.

13. The Appraiser must estimate and support the economic rent, state the contract rent and the remaining term of the lease as of the date of value. Lessor and lessee responsibilities for paying major expenses, e.g., taxes, insurance and maintenance shall be included.

14. Appraiser shall itemize in detail the "improvements pertaining to realty" (Eminent Domain Law-CCP Section 1263.205) showing their replacement cost new, depreciated value in place, salvage value if any, and relocation estimate. To the extent possible, determine the ownership claims of the Improvements Pertaining to the Realty.

15. In cases where the Appraisal Assignment requires a Specialty Appraisal (Furniture, Fixtures, Machinery and Equipment) and/or Specialists Reports (title, survey, soils, engineering), Appraiser shall utilize the services of Commission's On-Call Consultants for such services or obtain Commission's



prior approval for any others. Fees charged by Commission's On-Call Consultants for Specialty Appraisal and/or Specialists Reports shall be paid directly by the Commission.

16. It is the Appraiser's responsibility to thoroughly review the Specialty Appraisal for adoption (with adjustments or not, as appropriate) and inclusion in the overall appraisal. The estimated values that the specialty items contribute to the overall value of the real estate will be separately stated but included in the total value of the property.

17. If any legal issues exist during the appraisal assignment, Appraiser shall request legal opinion. All legal opinions shall be rendered by Commission's legal counsel.

18. It is the Appraiser's responsibility to contact the Commission's legal counsel, if necessary, for discussion and/or clarification in identifying personal or real property.

19. If hazardous waste is discovered on the property, Appraiser shall seek further direction from the Commission.

**EXHIBIT A-2**  
**SCOPE OF SERVICES**  
**RIGHT OF WAY APPRAISAL REVIEW SERVICES**

The Riverside County Transportation Commission (Commission) has procured one or more Consultants (Consultant/Review Appraiser) to provide Appraisal Review Services on an On-Call/as needed basis in support of current Commission Projects, Measure A Projects, and projects done in partnership with other agencies, pursuant to Task Orders issued in the sole discretion of the Commission.

Task Orders shall be awarded through an additional qualification-based selection process. Such review appraisal services may include, but are not limited to, the following work programs, and/or comply with applicable requirements below:

1. When required by the Commission, Review Appraiser shall examine appraisals prepared by Commission's On-Call Residential, Commercial, Industrial, Railroad, and/or Agricultural appraisers.
2. When required by the Commission, Review Appraiser shall examine appraisals submitted by the property owners and comment by memorandum on the findings.
3. Review Appraiser shall provide Appraisal Review Services based on nationally recognized appraisal standards and techniques, including those established by the Uniform Standards of Professional Appraisal Practice (USPAP), the Uniform Appraisal Standards for Federal Land Acquisition; ensure compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and implemented by 49 CFR Part 24; the State of California Government Code, the State of California Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Code of Regulations CH 6, Art 1, Section 6000 et seq.), and the California Code of Civil Procedure. Comply with the requirements of the Caltrans Right of Way Manual, when applicable. Consultants must be licensed by the State of California.
4. Review Appraiser shall provide Appraisal Review Services to ensure compliance for appraisals prepared in accordance with the Uniform Appraisal Standards for Federal Land Acquisition ("Yellow Book"), Consultant must be licensed by the State of

California.

5. Review Appraiser must be qualified to provide expert witness testimony and defend the conclusions at any Administrative or Judicial proceeding.

6. Review Appraiser may be required to meet with and coordinate their efforts with Commission staff, Commission legal counsel, other consultants, or Caltrans staff; participate in office or project site meetings.

7. It is the Review Appraiser's responsibility to contact Commission's project engineers for discussion and/or clarification of any project design matters. This is critical in reviewing appraisals of partial acquisitions and easements where engineering information must be verified.

8. Review Appraiser shall examine appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

9. Appraisal Review reports may be reviewed for acceptance by Caltrans or other approving agencies.

10. If the Review Appraiser is unable to recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation or market value, and it is determined that it is not practical to obtain additional appraisal, Review Appraiser may develop appraisal documentation to recommend value.

11. The Review Appraiser and the Appraiser should discuss the appraisal assignment as soon work is assigned. The Review Appraiser and, if practical, the Appraiser should hold at least one field review to identify any legal issues that may exist. If any legal issues exist; the Review Appraiser shall request legal opinion.

12. All legal opinions shall be rendered by Commission's legal counsel and the appraisal prepared in accordance therewith.

13. The Review Appraiser's certification of the recommended value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation. Any damages or benefits to any remaining property shall also be identified in the statement.

14. All reports and deliverables shall typically consist of one (1) original and one (1)

electronic copy, including specialty reports which may be prepared by other consultants.

15. In cases where the assignment requires other services, subject to Commission authorization, Review Appraiser shall utilize the services of Commission's On-Call Consultants. Fees charged by Commission's On-Call Consultants shall be paid directly by Commission.

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**EXHIBIT "B"**  
**COMPENSATION AND PAYMENT**

**[attached behind this page]**

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**EXHIBIT "B"**

**COMPENSATION SUMMARY<sup>1</sup>**

<b>FISCAL YEAR</b>	<b>PROJECT</b>	<b>COST</b>
FY 2024/25	Services	\$ 50,000.00
FY 2025/26	Services	307,500.00
FY 2026/27	Services	307,500.00
FY 2027/28	Services	307,500.00
FY 2028/29	Services	307,500.00
	<b>SUBTOTAL</b>	<b>1,280,000.00</b>
	<b>OTHER DIRECT COSTS</b>	<b>5,000.00</b>
	<b>TOTAL COSTS</b>	<b>\$ 1,285,000.00</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.

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**TO BE INSERTED FROM RFP:**

**EXHIBIT “C” CALTRANS/STATE REQUIREMENTS**

**EXHIBIT “D” FHWA/CALTRANS REQUIREMENTS**

**EXHIBIT “F” FTA REQUIREMENTS**

**EXHIBIT “G” – LOBBYING ACTIVITIES DISCLOSURE**

**TO BE INSERTED FROM CONSULTANT PROPOSAL:**

**EXHIBIT “H” – DBE COMMITMENT FORM**

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**EXHIBIT "E"**

**CERTIFICATE OF CONSULTANT AND  
EXECUTIVE ORDER N-6-22 CERTIFICATION**

**[attached behind this page]**

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## CERTIFICATE OF CONSULTANT

I HEREBY CERTIFY that I am the \_\_\_\_\_ and duly authorized representative of the firm of \_\_\_\_\_ whose address is \_\_\_\_\_, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement; nor
- (b) agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the agreement; nor
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this agreement involving participation of Federal-aid Highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

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

Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**EXECUTIVE ORDER N-6-22 CERTIFICATION**

Executive Order N-6-22 issued by Governor Gavin Newsom on March 4, 2022, directs all agencies and departments that are subject to the Governor’s authority to (a) terminate any contracts with any individuals or entities that are determined to be a target of economic sanctions against Russia and Russian entities and individuals; and (b) refrain from entering into any new contracts with such individuals or entities while the aforementioned sanctions are in effect.

Executive Order N-6-22 also requires that any contractor that: (1) currently has a contract with the Riverside County Transportation Commission (“Commission”) funded through grant funds provided by the State of California; and/or (2) submits a bid or proposal or otherwise proposes to or enter into or renew a contract with the Commission with State of California grant funds, certify that the person is not the target of any economic sanctions against Russia and Russian entities and individuals.

The contractor hereby certifies, SUBJECT TO PENALTY FOR PERJURY, that a) the contractor is not a target of any economic sanctions against Russian and Russian entities and individuals as discussed in Executive Order N-6-22 and b) the person signing below is duly authorized to legally bind the Contractor. This certification is made under the laws of the State of California.

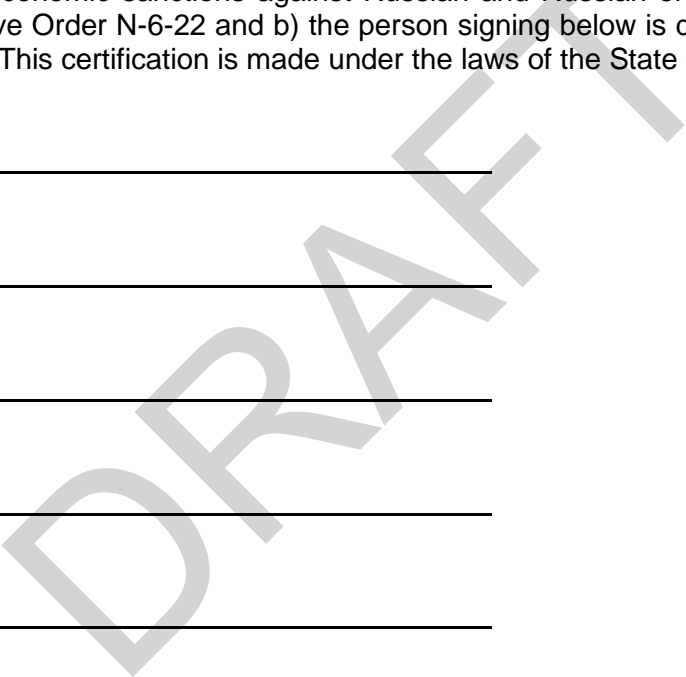
Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Date: \_\_\_\_\_



**Agreement No. 25-31-046-00**

**PROFESSIONAL SERVICES AGREEMENT  
WITH FHWA AND STATE FUNDING ASSISTANCE**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
CBRE, INC.  
FOR ON-CALL  
RIGHT OF WAY APPRAISAL AND  
APPRAISAL REVIEW SERVICES**

**Parties and Date.**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2025, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and CBRE, INC. ("Consultant"), a CORPORATION. The Commission and Consultant are sometimes referred to herein individually as "Party", and collectively as the "Parties".

**Recitals.**

A. 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").

B. 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.

C. 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.

D. The Western Riverside County Regional Conservation Authority ("RCA") is a Joint Powers Authority ("JPA") comprised of the County and eighteen cities in the western portion of the County.

E. Pursuant to an Implementation and Management Services Agreement between the Commission and RCA, the Commission provides management services on behalf of RCA, and may contract with consultants to provide services for RCA.

F. The sources of funding for payment for on-call professional consulting services provided under this Agreement may include the following funding sources:

Measure A, State Transportation Improvement Program,  
Federal Highway Administration (FHWA), Federal Transit

Administration (FTA), Transportation Uniform Mitigation Fees, or RCA reimbursements.

This Agreement shall not be deemed to be approved by the Commission until the certifications shown in Exhibit "E" attached hereto and incorporated herein by reference, is executed. Consultant shall comply with all funding source requirements as further set forth in this Agreement and the attached exhibits.

G. Consultant desires to perform and assume responsibility for the provision of certain on-call right of way appraisal and appraisal review services for projects in the County of Riverside, California. Services shall be provided for the Commission or for the benefit of RCA, as directed, on the terms and conditions set forth in this Agreement and in the task order(s) to be solicited, awarded and authorized by Commission as further described in this Agreement ("Task Order"). Consultant represents that it is experienced in providing such services to public clients, is licensed in the State of California (if necessary), and is familiar with the plans of the Commission.

H. Commission desires to engage Consultant to render such services on an on-call basis. Services shall be ordered by Task Order(s) to be issued pursuant to this Agreement for future projects as set forth herein and in each Task Order (each such project shall be designated a "Project" under this Agreement).

## **Terms.**

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 on-call right of way appraisal and appraisal review services for the Projects ("Services"). The Services are generally described in Exhibit "A" attached hereto and incorporated herein by reference. The Services shall be more particularly described in the individual Task Orders issued by the Commission's Executive Director or designee. No Services shall be performed unless authorized by a Task Order. All Services shall be subject to, and performed in accordance with, this Agreement, the relevant Task Order, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

2. Task Orders; Commencement of Services; Schedule of Services. Services under this Agreement shall be requested by the Commission pursuant to Task Order requests. If Commission accepts Consultant's Task Order proposal, Commission shall issue a purchase order or executed task order for the Services ("Commission's Task Order Authorization"). Consultant's agreement to the final terms of a proposed Task Order, Commission's Task Order Authorization and Consultant's commencement of the Services shall indicate the Parties' agreement to the terms of the relevant Task Order.

Consultant shall commence Services under a Task Order within five (5) days of receiving Commission's Task Order Authorization.

Consultant shall perform the Services expeditiously, in accordance with any schedule for the Services set forth in a Task Order (“Schedule of Services”). Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, Commission shall respond to Consultant's submittals in a timely manner. Upon request of the Commission, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

Task Orders may not be used to amend the language (or the terms) of this Agreement nor to exceed the scope of work under this Agreement.

3. Pre-Award Audit. As a result of the funding for this Project, and to the extent Caltrans procedures apply in connection therewith, issuance of a “Notice to Proceed” or other authorization to proceed under a Task Order may be contingent upon completion and approval of a pre-award audit. Any questions raised during the pre-award audit shall be resolved before Services are commenced under a Task Order. The funding provided under this Agreement is contingent on meeting all funding requirements and could be withdrawn, thereby entitling the Commission to terminate this Agreement, if the procedures are not completed. The Consultant's files shall be maintained in a manner to facilitate State process reviews. In addition, Caltrans may require that prior to performance of any work for which funding reimbursement through Caltrans is requested and provided, that Caltrans must give to Commission an “Authorization to Proceed”.

4. Audit Procedures.

4.1 Consultant and certain subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an Independent Cost Review (ICR) Audit, or a CPA ICR audit work paper review. If selected for audit or review, this Agreement, Consultant's cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. This Agreement, Consultant's cost proposal, and ICR shall be adjusted by Consultant and approved by the Commission's contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into this Agreement by this reference if directed by Commission at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of the Agreement terms and cause for termination of this Agreement and disallowance of prior reimbursed costs. Additional audit provisions applicable to this Agreement are set forth in Sections 22 and 23 of this Agreement.

Section 4.2 and 4.3 shall apply to the extent applicable to the Task Order and funding source.

4.2 During any Caltrans' review of the ICR audit work papers created by the Consultant's independent CPA (which may include review by the Independent Office of Audits and Investigations), Caltrans will work with the CPA and/or Consultant toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans identifies significant issues during the review and is unable to issue a cognizant approval letter, Commission will reimburse the Consultant at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines is received and approved by Caltrans.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
- b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
- c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.

4.3 If Caltrans is unable to issue a cognizant letter per Section 4.2 above, Caltrans may require Consultant to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the Caltrans' management letter. Caltrans will then have up to six (6) months to review the Consultant's and/or the independent CPA's revisions.

If the Consultant fails to comply with the provisions of this Section 4, or if Caltrans is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in Section 4.2 above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this Agreement.

Consultant may submit to Commission final invoice only when all of the following items have occurred: (1) Caltrans accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this Agreement has been completed to the satisfaction of Commission; and, (3) Caltrans has issued its final ICR review letter. The Consultant must submit its final invoice to Commission no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this Agreement and all Task Orders issued under this Agreement, and all other agreements executed between the Commission and the Consultant, either as a prime or subconsultant, with the same fiscal period ICR.

5. Term.

5.1 This Agreement shall go into effect on the date first set forth above, contingent upon approval by Commission, and shall remain in effect for three (3) years, unless extended by contract amendment. The Commission may extend the term of this Agreement, in its sole discretion, for two (2) additional one (1) year period(s). The maximum term of this Agreement, including all option terms, shall not exceed five (5) years. No Task Order shall extend beyond the expiration date of this Agreement.

5.2 Consultant is advised that any recommendation for contract award is not binding on Commission until this Agreement is fully executed and approved by the Commission.

5.3 This Agreement shall remain in effect until the date set forth above, 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.

6. Commission's Contract Administrator. The Commission hereby designates the Commission's Executive Director, or his or her designee, to act as its Contract Administrator for the performance of this Agreement ("Commission's Contract Administrator"). Commission's Contract Administrator shall have the authority to act on behalf of the Commission for all purposes under this Agreement. Commission's Contract Administrator 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 Contract Administrator or his or her designee.

7. Consultant's Representative. Consultant hereby designates **Beth B. Finestone, Executive Vice President** 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 or her 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 Contract Administrator 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 Contract Administrator.

8. 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 herein. The key personnel for performance of this Agreement are: **Beth B. Finestone, Principal Agent; John G. Ellis, Principal Member; Adam M. Bogorad, MAI Reviewer; J. Richard Donahue, MAI Reviewer; William Larsen, Senior Appraiser; Ryan J. Dobbins, Senior Appraiser; Jerardo Arciniega, Senior Appraiser; Stephanie Kavanaugh, Senior Appraiser; Nicole B. Galvez, Senior Appraiser; Susan O. Gordon, Senior Appraiser; Brian M. DeGuzman, Appraiser; Brandon Min, Appraiser; and Sharon A Hennessey, Subconsultant/Appraisal support Services**, or as otherwise identified in the Task Order.

9. Standard of Care; License. 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 and RCA 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.

10. 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. Consultant hereby indemnifies and holds the Commission and RCA harmless, pursuant to the indemnification provisions contained in this Agreement, from any and all claims that may be made against the Commission based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

## 11. Project Progress.

11.1 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 Contract Administrator.

11.2 Trend Meetings. Consultant shall conduct trend meetings with the Commission's Contract Administrator 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.

11.3 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.

## 12. Delay in Performance.

12.1 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, pandemics, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather, performance of such act shall be excused for the period of such delay.

12.2 Written Notice. If Consultant believes it is entitled to an extension of time due to conditions set forth in subsection 12.1, 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.

12.3 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.

13. 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 Contract Administrator 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 Federal funding. In the event that Commission's Contract Administrator, in his or her sole discretion, determines the formally submitted work product to be not in accordance with the standard of care established under this Agreement, Commission's Contract Administrator may require Consultant to revise and resubmit the work at no cost to the Commission.

14. 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.

15. Opportunity to Cure; Inspection of Work. 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. Consultant shall allow the Commission's Contract Administrator and Caltrans to inspect or review Consultant's work in progress at any reasonable time.

16. Final Acceptance. Upon determination by the Commission that Consultant has satisfactorily completed the Services required under this Agreement and within the term set forth herein 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.

17. 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 the United States Department of Transportation. For example, and not by way of limitation, a signed Categorical Exclusion, Finding of No Significant Impact, or published Record of Decision may be required to be approved and/or completed by the United States Department of Transportation. For Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such 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, RCA and their 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.

18. Fees and Payment.

18.1 The method of payment for this Agreement will be based specific rates of compensation. Consultant will be reimbursed for hours worked at the hourly rates specified in the Consultant's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

18.2 In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order.

18.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's approved Cost Proposal.

18.4 Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. Consultant will be responsible for transportation and subsistence costs in excess of State rates.

18.5 When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

18.6 Progress payments for each Task Order will be made monthly in

arrears based on services provided and actual costs incurred. No payment will be made prior to approval or for any work performed prior to approval of this Agreement, or prior to issuance of a Task Order.

18.7 Consultant will be reimbursed within thirty (30) days upon approval by Commission's Contract Administrator of itemized invoices submitted by Consultant. Separate invoices itemizing all costs are required for all work performed under each Task Order. Commission's Contract Administrator shall notify Consultant of any disputed items contained in an invoice, and payment for such items shall be withheld pending resolution of the Commission's concerns.

18.8 Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number.

Invoices shall be mailed to Commission's Contract Administrator at the following address:

Riverside County Transportation Commission  
Attention: Accounts Payable  
P.O. 12008  
Riverside, CA 92502

18.9 The total amount payable by Commission for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment. If Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

18.10 Commission has or will enter into six (6) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("On-Call Right of Way Contracts"). The other On-Call Right of Way Contracts are **Bender Rosenthal, Inc., 25-31-008-00; Hawran & Malm, LLC., 25-31-047-00; R.P. Laurain & Associates, Inc., 25-31-048-00; Riggs & Riggs, Inc., 23-31-049-00, and Thompson and Thompson Real Estate Valuation and Consulting, Inc., 25-31-050-00**. The total amount payable by Commission for the On-Call Right of Way Contracts shall not exceed a cumulative maximum total value of Seven Hundred Seventy-One Thousand Dollars (\$771,000) ("NTE Sum"). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the On-Call Right of Way Contracts through Task Orders. Each time a Task Order is awarded under any of the On-Call Right of Way Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the On-Call Right of Way Contracts. The notice must identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum.

Consultant acknowledges and agrees that Commission must not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant must not enter into a Task Order that exceeds the NTE Sum.

18.11 All subcontracts in excess of \$25,000 shall contain the above provisions.

19. Disputes.

19.1 Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by mutual agreement of the Parties shall be decided by a committee consisting of RCTC's Contract Administrator and the Director of Capital Projects, who may consider written or verbal information submitted by Consultant.

19.2 Not later than 30 days after completion of all Services under this Agreement, Consultant may request review by the Commission's Executive Director of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

19.3 Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this Agreement.

20. Termination; Suspension.

20.1 Commission reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant, for any or no reason, with the reasons for termination stated in the notice. Commission may terminate Services under a Task Order, at any time, for any or no reason, with the effective date of termination to be specified in the notice of termination of Task Order.

20.2 Commission may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, Commission may proceed with the Services in any manner deemed proper by Commission. If Commission terminates this Agreement with Consultant, Commission shall pay Consultant the sum due to Consultant under this Agreement for Services completed and accepted prior to termination, unless the cost of completion to Commission exceeds the funds remaining in the Agreement. In such case, the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

20.3 In addition to the above, payment upon termination 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 Contract Administrator 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

20.4 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.

20.5 In addition to the above, 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 this Agreement. Termination of this Agreement for cause may be considered by the Commission in determining whether to enter into future agreements with Consultant.

20.6 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.

20.7 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.

20.8 Consultant may not terminate this Agreement except for cause.

21.9 In addition to the termination rights above, Commission may temporarily suspend this Agreement or Services under any Task Order, at no additional cost to Commission, provided that Consultant is given written notice of temporary suspension. If Commission gives such notice of temporary suspension, Consultant shall immediately suspend its activities under the relevant Task Order(s). A temporary suspension may be issued concurrent with a notice of termination.

## 21. Cost Principles and Administrative Requirements.

21.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

21.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

21.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48

CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to Commission.

21.4 All subcontracts in excess of \$25,000 shall contain the above provisions.

22. Retention of Records/Audit. For the purpose of determining compliance with, as applicable, 2 CFR Part 200, Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of this Agreement pursuant to Government Code 8546.7; Consultant, subconsultants, and Commission shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering this Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under this Agreement. The State, State Auditor, Commission, or any duly authorized representative of the State or Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to this Agreement and, if applicable, indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

22.1 Accounting System. Consultant 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 Consultant 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.

23. Audit Review Procedures.

23.1 Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by Commission's Chief Financial Officer.

23.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by Commission's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

23.3 Neither the pendency of a dispute nor its consideration by Commission shall excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.

24. Subcontracting.

24.1 Nothing contained in this Agreement or otherwise, shall create any contractual relation between Commission and any subconsultant(s), and no subcontract

shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to Commission and RCA for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from Commission's obligation to make payments to the Consultant.

24.2 Consultant shall perform the Services contemplated with resources available within its own organization and no portion of the Services pertinent to this Agreement shall be subcontracted without written authorization by Commission's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

24.3 Consultant shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to Consultant by Commission.

24.4 Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.

24.5 Any substitution of subconsultant(s) must be approved in writing by Commission's Contract Administrator prior to the start of work by the subconsultant(s).

24.6 Exhibit "B" may set forth the rates at which each subconsultant shall bill the Consultant for Services and that are subject to reimbursement by the Commission to Consultant. Additional Direct Costs, as defined in Exhibit "B" shall be the same for both the Consultant and all subconsultants, unless otherwise identified in Exhibit "B" or in a Task Order. The subconsultant rate schedules and cost proposals contained herein are for accounting purposes only.

## 25. Equipment Purchase

25.1 Prior authorization, in writing, by Commission's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract for supplies, equipment, or services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

25.2 For purchase of any item, service or consulting work not covered in the Cost Proposal and exceeding \$5,000 prior authorization, in writing, by Commission's Contract Administrator is required. Three competitive quotations must be submitted with the request for such purchase, or the absence of bidding must be adequately justified.

25.3 Any equipment purchased as a result of this Agreement is subject to the following: Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, Commission shall receive a proper refund or credit at the conclusion of this Agreement, or if this Agreement is terminated, Consultant may either keep the



equipment and credit Commission in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established Commission procedures; and credit Commission in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by Commission and Consultant. If Consultant determines to sell the equipment, the terms and conditions of such sale must be approved in advance by Commission. 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the Project.

25.4 All subcontracts in excess \$25,000 shall contain the above provisions.

26. Labor Code Requirements.

26.1 Prevailing Wages.

(a) If applicable, Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the Services.

(b) When prevailing wages apply to the Services described in the Scope of Services, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

(c) Copies of the prevailing rate of per diem wages in effect at commencement of this Agreement 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, RCA and their 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.

26.2 DIR Registration. If the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

26.3 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 Consultant or the Services are not subject to the Eight-Hour Law. Consultant shall forfeit to Commission 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 Consultant or the Services are not subject to the Eight-Hour Law.

26.4 Employment of Apprentices. This Agreement shall not prevent the employment of properly indentured apprentices in accordance with the California Labor Code, and no employer or labor union shall refuse to accept otherwise qualified employees as indentured apprentices on the work performed hereunder solely on the ground of race, creed, national origin, ancestry, color or sex. Every qualified apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which he or she is employed and shall be employed only in the craft or trade to which he or she is registered.

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

The parties expressly understand that the responsibility for compliance with provisions of this Section and with Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code in regard to all apprenticeable occupations lies with Consultant

27. Ownership of Materials/Confidentiality.

27.1 Documents & Data. This Agreement creates an exclusive and perpetual license for Commission and RCA 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 and RCA are 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 or RCA.

Commission and RCA 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 and RCA's sole risk.

27.2 Intellectual Property. In addition, Commission and RCA 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 and RCA 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.

27.3 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 or RCA'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.

27.4 Infringement Indemnification. Consultant shall defend, indemnify and hold the Commission, RCA, their directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by Commission or RCA of the Documents & Data, including any method, process, product, or concept specified or depicted.

28. Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold Commission, RCA, Caltrans and their 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, inverse condemnation, and any claims related to property acquisition and relocation rules or failure to detect or abate hazardous materials, which are brought by a third party, and which, in any manner arise out of or are 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, RCA, Caltrans, and their directors, officials, officers, employees, consultants, agents, or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Commission, RCA, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission, RCA, Caltrans and their 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, RCA, Caltrans or their directors, officials officers, employees, consultants, agents, or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

29. Insurance.

29.1 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 a form and with insurance companies acceptable to the Commission. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this Section.

29.2 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 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. Consultant shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit. Limits may be achieved by any combination of primary and excess or umbrella liability insurance; (2) *Automobile Liability*: \$2,000,000 per accident for bodily injury and property damage. Limits may be achieved by any combination of primary and excess or umbrella liability insurance; and (3) *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.

29.3 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. For Consultant, such insurance shall be in an amount not less than \$2,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. Subconsultants of Consultant shall obtain such insurance in an amount not less than \$1,000,000 per claim. Notwithstanding the foregoing, the Commission may consider written requests to lower or dispense with the errors and omissions liability insurance requirement contained in this Section for certain subconsultants of Consultant, on a case-by-case basis, depending on the nature and scope of the Services to be provided by the subconsultant. Approval of such request shall be in writing, signed by the Commission's Contract Administrator.

29.4 Aircraft Liability Insurance. Prior to conducting any Services requiring use of aircraft, Consultant shall procure and maintain, or cause to be procured and maintained, aircraft liability insurance or equivalent form, with a single limit as shall be required by the Commission. Such insurance shall include coverage for owned, hired and non-owned aircraft and passengers, and shall name, or be endorsed to name, the Commission, Caltrans and their directors, officials, officers, employees and agents as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant.

29.5 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) 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 the Commission, RCA, 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 the Commission's, RCA's 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) the Commission, RCA, 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 Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Commission, RCA, Caltrans and their 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, RCA, Caltrans and their 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.

(c) Workers' Compensation and Employers Liability Coverage.

(i) Consultant 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 the Commission, RCA, Caltrans and their 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.

(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 the Commission, RCA, Caltrans and their 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 the Commission. 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) Consultant shall provide the Commission at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant 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 Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the Commission 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. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant 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 Consultant, and any approval of said insurance by the Commission, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant 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, Commission has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Commission will be promptly reimbursed by Consultant or Commission will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Commission may cancel this Agreement. The Commission may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(viii) Neither the Commission, RCA 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.



29.6 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, RCA, their 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 expense.

29.7 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.

29.8 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.

29.9 Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the Commission that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the Commission as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, the Commission may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

29.10 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.

30. 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.

31. 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, other than a Cardinal Change. For purposes of this Agreement, a Cardinal Change is a change which is "outside the scope" of the Agreement; in other words, work which should not be regarded as having been fairly and reasonably within the contemplation of the parties when the Agreement was entered into. An example of a change which is not a Cardinal Change would be where, in a contract to construct a building there are many changes in the materials used, but the size and layout of the building remains the same. Cardinal Changes are not within the authority of this provision to order, and shall be processed by the Commission as "sole source" procurements according to applicable law, including the requirements of FTA Circular 4220.1D, paragraph 9(f).

(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.

## 32. Prohibited Interests.

32.1 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.

## 32.2 Consultant Conflict of Interest.

(a) Consultant shall disclose any financial, business, or other relationship with Commission that may have an impact upon the outcome of this

Agreement. Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

(b) Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

32.3 Commission 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.

32.4 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.

32.5 Covenant Against Contingent Fees. As required in connection with federal funding, the Consultant 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 the terms herein, 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.

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

32.7 Covenant Against Expenditure of Commission, State or Federal Funds for Lobbying. The Consultant certifies that to the best of his/ her knowledge and belief no state, federal or local agency appropriated funds have been paid, or will be paid by or on behalf of the Consultant to any person for the purpose of influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the

Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the award of any state or federal contract, grant, loan, or cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

(a) If any funds other than federal appropriated funds have been paid, or will be paid to any person for the purpose of influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this Agreement, the Consultant shall complete and submit the attached Exhibit "F", Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with the attached instructions.

(b) The Consultant's certification provided in this Section is a material representation of fact upon which reliance was placed when this Agreement was entered into, and is a prerequisite for entering into this Agreement pursuant to Section 1352, Title 31, US. Code. Failure to comply with the restrictions on expenditures, or the disclosure and certification requirements set forth in Section 1352, Title 31, US. Code may result in a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) The Consultant also agrees by signing this Agreement that he/she shall require that the language set forth in this Section be included in all Consultant subcontracts which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

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

33. 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.

34. Right to Employ Other Consultants. Commission and RCA reserve the right to employ other consultants in connection with the Project.

35. Governing Law. This Agreement shall be governed by and construed with the laws of the State of California. Venue shall be in Riverside County.

36. Disputes; Attorneys' Fees.

36.1 Prior to commencing any action hereunder, the Parties shall attempt in good faith to resolve any dispute arising between them. The pendency of a dispute shall not excuse Consultant from full and timely performance of the Services.

36.2. If the Parties are unable to resolve a dispute after attempting in good faith to do so, the Parties may seek any other available remedy to resolve the dispute. 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.

37. Time of Essence. Time is of the essence for each and every provision of this Agreement.

38. 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.

39. 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:**

CBRE, Inc.  
5921 Owensmouth Avenue  
Woodland Hills, CA 91367

Attn: Beth B. Finestone

**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.

40. 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. Notwithstanding the foregoing, if any provision of this Agreement conflicts in any way with a state or federal requirement, as directed by the Commission (i) the state or federal requirement shall govern; or (ii) the more stringent requirement shall apply.

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

42. 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.

43. 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.

44. Provisions Applicable When State Funds or Federal Funds Are Involved. When funding for the Services under a Task Order is provided, in whole or in part, from Caltrans or other State funding source, Consultant shall also fully and adequately comply with the provisions included in Exhibit "C" (California Department of Transportation requirements) attached hereto and incorporated herein by reference. When funding for the Services under a Task Order is provided, in whole or in part, from the FHWA, Consultant shall also fully and adequately comply with the provisions included in Exhibit "D" (FHWA Requirements) attached hereto and incorporated herein by reference. When funding for the Services under a Task Order is provided, in whole or in part, from the FTA, Consultant shall also fully and adequately comply with the provisions included in Exhibit "F" (FTA Requirements) attached hereto and incorporated herein by reference.

45. 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, shall survive any such expiration or termination.

46. No Third Party Beneficiaries. RCA and Caltrans are intended third party beneficiaries of any right or benefit granted to RCA or Caltrans, respectively, under this Agreement. Except as set forth in the foregoing sentence, there are no other intended third party beneficiaries of any right or obligation assumed by the Parties.

47. Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

48. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

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

50. 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.

51. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties, and shall not be assigned by Consultant without the prior written consent of Commission.

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

53. 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.

55. Electronically Transmitted Signatures; Electronic Signatures. 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 this Agreement for all purposes. This Agreement may be signed using an electronic signature.

**[Signatures on following page]**

**SIGNATURE PAGE  
TO  
PROFESSIONAL SERVICES AGREEMENT  
WITH STATE AND FHWA FUNDING/ASSISTANCE**

**ON CALL RIGHT OF WAY APPRAISAL AND APPRAISAL REVIEW SERVICES**

**IN WITNESS WHEREOF**, this Agreement was executed on the date first written above.

<p><b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b></p> <p>By: _____  <b>[INSERT NAME]</b>                  Chair</p> <p><i>Approved as to Form:</i></p> <p>By: _____                  Best, Best &amp; Krieger LLP                  General Counsel</p>	<p><b>CONSULTANT CBRE, INC.</b></p> <p>By: _____                  Signature</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Title</p> <p><b>ATTEST:</b></p> <p>By: _____</p> <p>Its: _____</p>
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\* 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.



**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**[attached behind this page]**

DRAFT

**EXHIBIT A-1**  
**SCOPE OF SERVICES**  
**RIGHT OF WAY APPRAISAL SERVICES**

The Riverside County Transportation Commission (Commission) has selected Consultant (Consultant or Appraiser) as part of an on-call bench of firms engaged to provide right of way appraisal services for developed or undeveloped residential, commercial, industrial, agricultural and railroad properties. Consultant shall produce appraisal reports for full or partial acquisitions, easements, temporary construction easements, leased or licensed properties, and sale or disposition of excess/surplus properties, as required by the Commission. Services shall be provided on an oncall/ as needed basis in support of current and future Commission Projects, Measure A Projects and projects done in partnership with other agencies, pursuant to Task Orders issued in the sole discretion of the Commission.

Task Orders shall be awarded through an additional qualification-based selection process.

Such appraisal services may include, but are not limited to, the following work program and must comply with the requirements below, as applicable:

1. Consultant shall prepare appraisals in accordance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and implemented by 49 CFR Part 24; the State of California Government Code, the State of California Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Code of Regulations Ch 6, Art 1, Section 6000 et seq.), the California Code of Civil Procedure, the Uniform Standards of Professional Appraisal Practice (USPAP), and in some cases, the Uniform Appraisal Standards for Federal Land Acquisition Act. Consultant must be licensed by the State of California.
2. Consultant shall prepare appraisals in accordance with the Uniform Appraisal Standards for Federal Land Acquisition ("Yellow Book"). Consultant must be

licensed by the State of California.

3. Consultant must be qualified to provide expert witness testimony and defend the opinions or conclusions reached in the appraisal at any Administrative or Judicial proceeding.

4. Deliverables shall typically consist of three (3) originals of the completed appraisal report and one (1) electronic copy, specialty reports and component valuations which may be performed by someone other than Consultant and incorporated into the overall fair market valuation.

5. Consultant may be required to meet with and coordinate their efforts with Commission staff, Commission legal counsel, and other consultants or Caltrans staff; participate in office or project site meetings.

6. Appraisal reports may be reviewed for acceptance and approval by Commission's review appraisers and Caltrans. Revisions may be required by reason of this review process. Consultants may be requested to complete and deliver revised and/or updated appraisals. In the event of non-acceptance due to errors or omissions, Consultant shall have fifteen (15) calendar days to make corrections and return the revised appraisals to the review appraiser.

7. For proposed acquisitions, the owner of the real property or a designated representative will be invited by the Appraiser to accompany the Appraiser during the inspection of the property. This invitation must be in the form of a letter entitled "Notice to Appraise" written by the Appraiser to the owner. A copy of the invitation will be included in the appraisal report.

8. It is the Appraiser's responsibility to contact the Commission's project engineers for discussion and/or clarification of the Construction in the Manner Proposed. This is critical in the appraisal of partial acquisitions and easements where the Appraiser may need cross sections or other project engineering information to complete the report.

9. The highest and best use for the property in the before condition must be determined and supported. If a partial acquisition is involved, the highest and best use of the property in the after condition must be determined and

supported. If the existing use is not the premise on which the valuation is based, the appraisal will contain an explanation justifying the determination that the property is available and adaptable for a different highest and best use and there is demand for that use in the market.

10. Where the acquisition involves only a part (or portion) of the property, the Appraiser will estimate any severance damages and special benefits to the remainder, including reasoning and market data to support the opinion or conclusion. The Appraiser will indicate if the remainder constitutes an economic or uneconomic unit in the market and/or to the present owner.

11. The California Eminent Domain Law will be followed in partial acquisitions. Special benefits are to be offset only against damages to the remainder in accordance with the law.

12. Appraisal for easement acquisitions will reflect the restrictive elements of the easement to be acquired and the potential effect of such elements on the utility of the property considering its highest and best use. Full details with respect to any interference with the highest and best use of the property affected must be explained and supported.

13. The Appraiser must estimate and support the economic rent, state the contract rent and the remaining term of the lease as of the date of value. Lessor and lessee responsibilities for paying major expenses, e.g., taxes, insurance and maintenance shall be included.

14. Appraiser shall itemize in detail the "improvements pertaining to realty" (Eminent Domain Law-CCP Section 1263.205) showing their replacement cost new, depreciated value in place, salvage value if any, and relocation estimate. To the extent possible, determine the ownership claims of the Improvements Pertaining to the Realty.

15. In cases where the Appraisal Assignment requires a Specialty Appraisal (Furniture, Fixtures, Machinery and Equipment) and/or Specialists Reports (title, survey, soils, engineering), Appraiser shall utilize the services of Commission's On-Call Consultants for such services or obtain Commission's

prior approval for any others. Fees charged by Commission's On-Call Consultants for Specialty Appraisal and/or Specialists Reports shall be paid directly by the Commission.

16. It is the Appraiser's responsibility to thoroughly review the Specialty Appraisal for adoption (with adjustments or not, as appropriate) and inclusion in the overall appraisal. The estimated values that the specialty items contribute to the overall value of the real estate will be separately stated but included in the total value of the property.

17. If any legal issues exist during the appraisal assignment, Appraiser shall request legal opinion. All legal opinions shall be rendered by Commission's legal counsel.

18. It is the Appraiser's responsibility to contact the Commission's legal counsel, if necessary, for discussion and/or clarification in identifying personal or real property.

19. If hazardous waste is discovered on the property, Appraiser shall seek further direction from the Commission.

**EXHIBIT A-2**  
**SCOPE OF SERVICES**  
**RIGHT OF WAY APPRAISAL REVIEW SERVICES**

The Riverside County Transportation Commission (Commission) has procured one or more Consultants (Consultant/Review Appraiser) to provide Appraisal Review Services on an On-Call/as needed basis in support of current Commission Projects, Measure A Projects, and projects done in partnership with other agencies, pursuant to Task Orders issued in the sole discretion of the Commission.

Task Orders shall be awarded through an additional qualification-based selection process. Such review appraisal services may include, but are not limited to, the following work programs, and/or comply with applicable requirements below:

1. When required by the Commission, Review Appraiser shall examine appraisals prepared by Commission's On-Call Residential, Commercial, Industrial, Railroad, and/or Agricultural appraisers.
2. When required by the Commission, Review Appraiser shall examine appraisals submitted by the property owners and comment by memorandum on the findings.
3. Review Appraiser shall provide Appraisal Review Services based on nationally recognized appraisal standards and techniques, including those established by the Uniform Standards of Professional Appraisal Practice (USPAP), the Uniform Appraisal Standards for Federal Land Acquisition; ensure compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and implemented by 49 CFR Part 24; the State of California Government Code, the State of California Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Code of Regulations CH 6, Art 1, Section 6000 et seq.), and the California Code of Civil Procedure. Comply with the requirements of the Caltrans Right of Way Manual, when applicable. Consultants must be licensed by the State of California.
4. Review Appraiser shall provide Appraisal Review Services to ensure compliance for appraisals prepared in accordance with the Uniform Appraisal Standards for Federal Land Acquisition ("Yellow Book"), Consultant must be licensed by the State of

California.

5. Review Appraiser must be qualified to provide expert witness testimony and defend the conclusions at any Administrative or Judicial proceeding.

6. Review Appraiser may be required to meet with and coordinate their efforts with Commission staff, Commission legal counsel, other consultants, or Caltrans staff; participate in office or project site meetings.

7. It is the Review Appraiser's responsibility to contact Commission's project engineers for discussion and/or clarification of any project design matters. This is critical in reviewing appraisals of partial acquisitions and easements where engineering information must be verified.

8. Review Appraiser shall examine appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

9. Appraisal Review reports may be reviewed for acceptance by Caltrans or other approving agencies.

10. If the Review Appraiser is unable to recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation or market value, and it is determined that it is not practical to obtain additional appraisal, Review Appraiser may develop appraisal documentation to recommend value.

11. The Review Appraiser and the Appraiser should discuss the appraisal assignment as soon work is assigned. The Review Appraiser and, if practical, the Appraiser should hold at least one field review to identify any legal issues that may exist. If any legal issues exist; the Review Appraiser shall request legal opinion.

12. All legal opinions shall be rendered by Commission's legal counsel and the appraisal prepared in accordance therewith.

13. The Review Appraiser's certification of the recommended value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation. Any damages or benefits to any remaining property shall also be identified in the statement.

14. All reports and deliverables shall typically consist of one (1) original and one (1)

electronic copy, including specialty reports which may be prepared by other consultants.

15. In cases where the assignment requires other services, subject to Commission authorization, Review Appraiser shall utilize the services of Commission's On-Call Consultants. Fees charged by Commission's On-Call Consultants shall be paid directly by Commission.

DRAFT



**EXHIBIT "B"**  
**COMPENSATION AND PAYMENT**

**[attached behind this page]**

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**EXHIBIT "B"**

**COMPENSATION SUMMARY<sup>1</sup>**

<b>FISCAL YEAR</b>	<b>PROJECT</b>	<b>COST</b>
FY 2024/25	Services	\$ 50,000.00
FY 2025/26	Services	307,500.00
FY 2026/27	Services	307,500.00
FY 2027/28	Services	307,500.00
FY 2028/29	Services	307,500.00
	<b>SUBTOTAL</b>	<b>1,280,000.00</b>
	<b>OTHER DIRECT COSTS</b>	<b>5,000.00</b>
	<b>TOTAL COSTS</b>	<b>\$ 1,285,000.00</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.

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**TO BE INSERTED FROM RFP:**

**EXHIBIT “C” CALTRANS/STATE REQUIREMENTS**

**EXHIBIT “D” FHWA/CALTRANS REQUIREMENTS**

**EXHIBIT “F” FTA REQUIREMENTS**

**EXHIBIT “G” – LOBBYING ACTIVITIES DISCLOSURE**

**TO BE INSERTED FROM CONSULTANT PROPOSAL:**

**EXHIBIT “H” – DBE COMMITMENT FORM**

DRAFT

**EXHIBIT "E"**

**CERTIFICATE OF CONSULTANT AND  
EXECUTIVE ORDER N-6-22 CERTIFICATION**

**[attached behind this page]**

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## CERTIFICATE OF CONSULTANT

I HEREBY CERTIFY that I am the \_\_\_\_\_ and duly authorized representative of the firm of \_\_\_\_\_ whose address is \_\_\_\_\_, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement; nor
- (b) agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the agreement; nor
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this agreement involving participation of Federal-aid Highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

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

Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**EXECUTIVE ORDER N-6-22 CERTIFICATION**

Executive Order N-6-22 issued by Governor Gavin Newsom on March 4, 2022, directs all agencies and departments that are subject to the Governor’s authority to (a) terminate any contracts with any individuals or entities that are determined to be a target of economic sanctions against Russia and Russian entities and individuals; and (b) refrain from entering into any new contracts with such individuals or entities while the aforementioned sanctions are in effect.

Executive Order N-6-22 also requires that any contractor that: (1) currently has a contract with the Riverside County Transportation Commission (“Commission”) funded through grant funds provided by the State of California; and/or (2) submits a bid or proposal or otherwise proposes to or enter into or renew a contract with the Commission with State of California grant funds, certify that the person is not the target of any economic sanctions against Russia and Russian entities and individuals.

The contractor hereby certifies, SUBJECT TO PENALTY FOR PERJURY, that a) the contractor is not a target of any economic sanctions against Russian and Russian entities and individuals as discussed in Executive Order N-6-22 and b) the person signing below is duly authorized to legally bind the Contractor. This certification is made under the laws of the State of California.

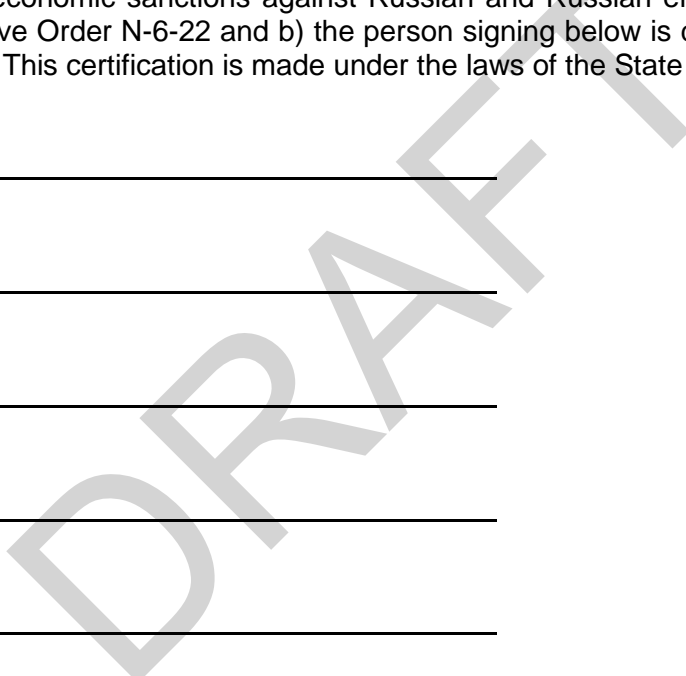
Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Date: \_\_\_\_\_



## Agreement No. 25-31-047-00

**PROFESSIONAL SERVICES AGREEMENT  
WITH FHWA AND STATE FUNDING ASSISTANCE**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
HAWRAN & MALM, LLC.  
FOR ON-CALL  
RIGHT OF WAY APPRAISAL AND  
APPRAISAL REVIEW SERVICES**

**Parties and Date.**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2025, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and HAWRAN & MALM. ("Consultant"), a LIMITED LIABILITY COMPANY. The Commission and Consultant are sometimes referred to herein individually as "Party", and collectively as the "Parties".

**Recitals.**

A. 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").

B. 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.

C. 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.

D. The Western Riverside County Regional Conservation Authority ("RCA") is a Joint Powers Authority ("JPA") comprised of the County and eighteen cities in the western portion of the County.

E. Pursuant to an Implementation and Management Services Agreement between the Commission and RCA, the Commission provides management services on behalf of RCA, and may contract with consultants to provide services for RCA.

F. The sources of funding for payment for on-call professional consulting services provided under this Agreement may include the following funding sources:

Measure A, State Transportation Improvement Program,  
Federal Highway Administration (FHWA), Federal Transit

Administration (FTA), Transportation Uniform Mitigation Fees, or RCA reimbursements.

This Agreement shall not be deemed to be approved by the Commission until the certifications shown in Exhibit "E" attached hereto and incorporated herein by reference, is executed. Consultant shall comply with all funding source requirements as further set forth in this Agreement and the attached exhibits.

G. Consultant desires to perform and assume responsibility for the provision of certain on-call right of way appraisal and appraisal review services for projects in the County of Riverside, California. Services shall be provided for the Commission or for the benefit of RCA, as directed, on the terms and conditions set forth in this Agreement and in the task order(s) to be solicited, awarded and authorized by Commission as further described in this Agreement ("Task Order"). Consultant represents that it is experienced in providing such services to public clients, is licensed in the State of California (if necessary), and is familiar with the plans of the Commission.

H. Commission desires to engage Consultant to render such services on an on-call basis. Services shall be ordered by Task Order(s) to be issued pursuant to this Agreement for future projects as set forth herein and in each Task Order (each such project shall be designated a "Project" under this Agreement).

## **Terms.**

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 on-call right of way appraisal and appraisal review services for the Projects ("Services"). The Services are generally described in Exhibit "A" attached hereto and incorporated herein by reference. The Services shall be more particularly described in the individual Task Orders issued by the Commission's Executive Director or designee. No Services shall be performed unless authorized by a Task Order. All Services shall be subject to, and performed in accordance with, this Agreement, the relevant Task Order, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

2. Task Orders; Commencement of Services; Schedule of Services. Services under this Agreement shall be requested by the Commission pursuant to Task Order requests. If Commission accepts Consultant's Task Order proposal, Commission shall issue a purchase order or executed task order for the Services ("Commission's Task Order Authorization"). Consultant's agreement to the final terms of a proposed Task Order, Commission's Task Order Authorization and Consultant's commencement of the Services shall indicate the Parties' agreement to the terms of the relevant Task Order.

Consultant shall commence Services under a Task Order within five (5) days of receiving Commission's Task Order Authorization.



Consultant shall perform the Services expeditiously, in accordance with any schedule for the Services set forth in a Task Order (“Schedule of Services”). Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, Commission shall respond to Consultant's submittals in a timely manner. Upon request of the Commission, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

Task Orders may not be used to amend the language (or the terms) of this Agreement nor to exceed the scope of work under this Agreement.

3. Pre-Award Audit. As a result of the funding for this Project, and to the extent Caltrans procedures apply in connection therewith, issuance of a “Notice to Proceed” or other authorization to proceed under a Task Order may be contingent upon completion and approval of a pre-award audit. Any questions raised during the pre-award audit shall be resolved before Services are commenced under a Task Order. The funding provided under this Agreement is contingent on meeting all funding requirements and could be withdrawn, thereby entitling the Commission to terminate this Agreement, if the procedures are not completed. The Consultant's files shall be maintained in a manner to facilitate State process reviews. In addition, Caltrans may require that prior to performance of any work for which funding reimbursement through Caltrans is requested and provided, that Caltrans must give to Commission an “Authorization to Proceed”.

4. Audit Procedures.

4.1 Consultant and certain subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an Independent Cost Review (ICR) Audit, or a CPA ICR audit work paper review. If selected for audit or review, this Agreement, Consultant's cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. This Agreement, Consultant's cost proposal, and ICR shall be adjusted by Consultant and approved by the Commission's contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into this Agreement by this reference if directed by Commission at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of the Agreement terms and cause for termination of this Agreement and disallowance of prior reimbursed costs. Additional audit provisions applicable to this Agreement are set forth in Sections 22 and 23 of this Agreement.

Section 4.2 and 4.3 shall apply to the extent applicable to the Task Order and funding source.

4.2 During any Caltrans' review of the ICR audit work papers created by the Consultant's independent CPA (which may include review by the Independent Office of Audits and Investigations), Caltrans will work with the CPA and/or Consultant toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans identifies significant issues during the review and is unable to issue a cognizant approval letter, Commission will reimburse the Consultant at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines is received and approved by Caltrans.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
- b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
- c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.

4.3 If Caltrans is unable to issue a cognizant letter per Section 4.2 above, Caltrans may require Consultant to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the Caltrans' management letter. Caltrans will then have up to six (6) months to review the Consultant's and/or the independent CPA's revisions.

If the Consultant fails to comply with the provisions of this Section 4, or if Caltrans is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in Section 4.2 above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this Agreement.

Consultant may submit to Commission final invoice only when all of the following items have occurred: (1) Caltrans accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this Agreement has been completed to the satisfaction of Commission; and, (3) Caltrans has issued its final ICR review letter. The Consultant must submit its final invoice to Commission no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this Agreement and all Task Orders issued under this Agreement, and all other agreements executed between the Commission and the Consultant, either as a prime or subconsultant, with the same fiscal period ICR.

5. Term.

5.1 This Agreement shall go into effect on the date first set forth above, contingent upon approval by Commission, and shall remain in effect for three (3) years, unless extended by contract amendment. The Commission may extend the term of this Agreement, in its sole discretion, for two (2) additional one (1) year period(s). The maximum term of this Agreement, including all option terms, shall not exceed five (5) years. No Task Order shall extend beyond the expiration date of this Agreement.

5.2 Consultant is advised that any recommendation for contract award is not binding on Commission until this Agreement is fully executed and approved by the Commission.

5.3 This Agreement shall remain in effect until the date set forth above, 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.

6. Commission's Contract Administrator. The Commission hereby designates the Commission's Executive Director, or his or her designee, to act as its Contract Administrator for the performance of this Agreement ("Commission's Contract Administrator"). Commission's Contract Administrator shall have the authority to act on behalf of the Commission for all purposes under this Agreement. Commission's Contract Administrator 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 Contract Administrator or his or her designee.

7. Consultant's Representative. Consultant hereby designates **Beth B. Finestone, Executive Vice President** 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 or her 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 Contract Administrator 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 Contract Administrator.

8. 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 herein. The key personnel for performance of this Agreement are: **Beth B. Finestone, Principal Agent; John G. Ellis, Principal Member; Adam M. Bogorad, MAI Reviewer; J. Richard Donahue, MAI Reviewer; William Larsen, Senior Appraiser; Ryan J. Dobbins, Senior Appraiser; Jerardo Arciniega, Senior Appraiser; Stephanie Kavanaugh, Senior Appraiser; Nicole B. Galvez, Senior Appraiser; Susan O. Gordon, Senior Appraiser; Brian M. DeGuzman, Appraiser; Brandon Min, Appraiser; and Sharon A Hennessey, Subconsultant/Appraisal support Services**, or as otherwise identified in the Task Order.

9. Standard of Care; License. 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 and RCA 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.

10. 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. Consultant hereby indemnifies and holds the Commission and RCA harmless, pursuant to the indemnification provisions contained in this Agreement, from any and all claims that may be made against the Commission based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

## 11. Project Progress.

11.1 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 Contract Administrator.

11.2 Trend Meetings. Consultant shall conduct trend meetings with the Commission's Contract Administrator 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.

11.3 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.

## 12. Delay in Performance.

12.1 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, pandemics, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather, performance of such act shall be excused for the period of such delay.

12.2 Written Notice. If Consultant believes it is entitled to an extension of time due to conditions set forth in subsection 12.1, 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.

12.3 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.

13. 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 Contract Administrator 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 Federal funding. In the event that Commission's Contract Administrator, in his or her sole discretion, determines the formally submitted work product to be not in accordance with the standard of care established under this Agreement, Commission's Contract Administrator may require Consultant to revise and resubmit the work at no cost to the Commission.

14. 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.

15. Opportunity to Cure; Inspection of Work. 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. Consultant shall allow the Commission's Contract Administrator and Caltrans to inspect or review Consultant's work in progress at any reasonable time.

16. Final Acceptance. Upon determination by the Commission that Consultant has satisfactorily completed the Services required under this Agreement and within the term set forth herein 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.

17. 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 the United States Department of Transportation. For example, and not by way of limitation, a signed Categorical Exclusion, Finding of No Significant Impact, or published Record of Decision may be required to be approved and/or completed by the United States Department of Transportation. For Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such 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, RCA and their 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.

18. Fees and Payment.

18.1 The method of payment for this Agreement will be based specific rates of compensation. Consultant will be reimbursed for hours worked at the hourly rates specified in the Consultant's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

18.2 In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order.

18.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's approved Cost Proposal.

18.4 Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. Consultant will be responsible for transportation and subsistence costs in excess of State rates.

18.5 When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

18.6 Progress payments for each Task Order will be made monthly in

arrears based on services provided and actual costs incurred. No payment will be made prior to approval or for any work performed prior to approval of this Agreement, or prior to issuance of a Task Order.

18.7 Consultant will be reimbursed within thirty (30) days upon approval by Commission's Contract Administrator of itemized invoices submitted by Consultant. Separate invoices itemizing all costs are required for all work performed under each Task Order. Commission's Contract Administrator shall notify Consultant of any disputed items contained in an invoice, and payment for such items shall be withheld pending resolution of the Commission's concerns.

18.8 Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number.

Invoices shall be mailed to Commission's Contract Administrator at the following address:

Riverside County Transportation Commission  
Attention: Accounts Payable  
P.O. 12008  
Riverside, CA 92502

18.9 The total amount payable by Commission for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment. If Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

18.10 Commission has or will enter into six (6) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("On-Call Right of Way Contracts"). The other On-Call Right of Way Contracts are **Bender Rosenthal, Inc., 25-31-008-00; Hawran & Malm, LLC., 25-31-047-00; R.P. Laurain & Associates, Inc., 25-31-048-00; Riggs & Riggs, Inc., 23-31-049-00, and Thompson and Thompson Real Estate Valuation and Consulting, Inc., 25-31-050-00**. The total amount payable by Commission for the On-Call Right of Way Contracts shall not exceed a cumulative maximum total value of Seven Hundred Seventy-One Thousand Dollars (\$771,000) ("NTE Sum"). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the On-Call Right of Way Contracts through Task Orders. Each time a Task Order is awarded under any of the On-Call Right of Way Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the On-Call Right of Way Contracts. The notice must identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum.



Consultant acknowledges and agrees that Commission must not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant must not enter into a Task Order that exceeds the NTE Sum.

18.11 All subcontracts in excess of \$25,000 shall contain the above provisions.

19. Disputes.

19.1 Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by mutual agreement of the Parties shall be decided by a committee consisting of RCTC's Contract Administrator and the Director of Capital Projects, who may consider written or verbal information submitted by Consultant.

19.2 Not later than 30 days after completion of all Services under this Agreement, Consultant may request review by the Commission's Executive Director of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

19.3 Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this Agreement.

20. Termination; Suspension.

20.1 Commission reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant, for any or no reason, with the reasons for termination stated in the notice. Commission may terminate Services under a Task Order, at any time, for any or no reason, with the effective date of termination to be specified in the notice of termination of Task Order.

20.2 Commission may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, Commission may proceed with the Services in any manner deemed proper by Commission. If Commission terminates this Agreement with Consultant, Commission shall pay Consultant the sum due to Consultant under this Agreement for Services completed and accepted prior to termination, unless the cost of completion to Commission exceeds the funds remaining in the Agreement. In such case, the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

20.3 In addition to the above, payment upon termination 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 Contract Administrator 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

20.4 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.

20.5 In addition to the above, 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 this Agreement. Termination of this Agreement for cause may be considered by the Commission in determining whether to enter into future agreements with Consultant.

20.6 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.

20.7 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.

20.8 Consultant may not terminate this Agreement except for cause.

21.9 In addition to the termination rights above, Commission may temporarily suspend this Agreement or Services under any Task Order, at no additional cost to Commission, provided that Consultant is given written notice of temporary suspension. If Commission gives such notice of temporary suspension, Consultant shall immediately suspend its activities under the relevant Task Order(s). A temporary suspension may be issued concurrent with a notice of termination.

## 21. Cost Principles and Administrative Requirements.

21.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

21.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

21.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48

CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to Commission.

21.4 All subcontracts in excess of \$25,000 shall contain the above provisions.

22. Retention of Records/Audit. For the purpose of determining compliance with, as applicable, 2 CFR Part 200, Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of this Agreement pursuant to Government Code 8546.7; Consultant, subconsultants, and Commission shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering this Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under this Agreement. The State, State Auditor, Commission, or any duly authorized representative of the State or Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to this Agreement and, if applicable, indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

22.1 Accounting System. Consultant 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 Consultant 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.

23. Audit Review Procedures.

23.1 Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by Commission's Chief Financial Officer.

23.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by Commission's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

23.3 Neither the pendency of a dispute nor its consideration by Commission shall excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.

24. Subcontracting.

24.1 Nothing contained in this Agreement or otherwise, shall create any contractual relation between Commission and any subconsultant(s), and no subcontract

shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to Commission and RCA for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from Commission's obligation to make payments to the Consultant.

24.2 Consultant shall perform the Services contemplated with resources available within its own organization and no portion of the Services pertinent to this Agreement shall be subcontracted without written authorization by Commission's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

24.3 Consultant shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to Consultant by Commission.

24.4 Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.

24.5 Any substitution of subconsultant(s) must be approved in writing by Commission's Contract Administrator prior to the start of work by the subconsultant(s).

24.6 Exhibit "B" may set forth the rates at which each subconsultant shall bill the Consultant for Services and that are subject to reimbursement by the Commission to Consultant. Additional Direct Costs, as defined in Exhibit "B" shall be the same for both the Consultant and all subconsultants, unless otherwise identified in Exhibit "B" or in a Task Order. The subconsultant rate schedules and cost proposals contained herein are for accounting purposes only.

## 25. Equipment Purchase

25.1 Prior authorization, in writing, by Commission's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract for supplies, equipment, or services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

25.2 For purchase of any item, service or consulting work not covered in the Cost Proposal and exceeding \$5,000 prior authorization, in writing, by Commission's Contract Administrator is required. Three competitive quotations must be submitted with the request for such purchase, or the absence of bidding must be adequately justified.

25.3 Any equipment purchased as a result of this Agreement is subject to the following: Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, Commission shall receive a proper refund or credit at the conclusion of this Agreement, or if this Agreement is terminated, Consultant may either keep the

equipment and credit Commission in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established Commission procedures; and credit Commission in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by Commission and Consultant. If Consultant determines to sell the equipment, the terms and conditions of such sale must be approved in advance by Commission. 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the Project.

25.4 All subcontracts in excess \$25,000 shall contain the above provisions.

26. Labor Code Requirements.

26.1 Prevailing Wages.

(a) If applicable, Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the Services.

(b) When prevailing wages apply to the Services described in the Scope of Services, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

(c) Copies of the prevailing rate of per diem wages in effect at commencement of this Agreement 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, RCA and their 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.

26.2 DIR Registration. If the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

26.3 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 Consultant or the Services are not subject to the Eight-Hour Law. Consultant shall forfeit to Commission 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 Consultant or the Services are not subject to the Eight-Hour Law.

26.4 Employment of Apprentices. This Agreement shall not prevent the employment of properly indentured apprentices in accordance with the California Labor Code, and no employer or labor union shall refuse to accept otherwise qualified employees as indentured apprentices on the work performed hereunder solely on the ground of race, creed, national origin, ancestry, color or sex. Every qualified apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which he or she is employed and shall be employed only in the craft or trade to which he or she is registered.

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

The parties expressly understand that the responsibility for compliance with provisions of this Section and with Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code in regard to all apprenticeable occupations lies with Consultant

27. Ownership of Materials/Confidentiality.

27.1 Documents & Data. This Agreement creates an exclusive and perpetual license for Commission and RCA 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 and RCA are 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 or RCA.

Commission and RCA 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 and RCA's sole risk.

27.2 Intellectual Property. In addition, Commission and RCA 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 and RCA 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.

27.3 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 or RCA'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.

27.4 Infringement Indemnification. Consultant shall defend, indemnify and hold the Commission, RCA, their directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by Commission or RCA of the Documents & Data, including any method, process, product, or concept specified or depicted.

28. Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold Commission, RCA, Caltrans and their 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, inverse condemnation, and any claims related to property acquisition and relocation rules or failure to detect or abate hazardous materials, which are brought by a third party, and which, in any manner arise out of or are 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, RCA, Caltrans, and their directors, officials, officers, employees, consultants, agents, or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Commission, RCA, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission, RCA, Caltrans and their 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, RCA, Caltrans or their directors, officials officers, employees, consultants, agents, or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

29. Insurance.

29.1 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 a form and with insurance companies acceptable to the Commission. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this Section.

29.2 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 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. Consultant shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit. Limits may be achieved by any combination of primary and excess or umbrella liability insurance; (2) *Automobile Liability*: \$2,000,000 per accident for bodily injury and property damage. Limits may be achieved by any combination of primary and excess or umbrella liability insurance; and (3) *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.

29.3 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. For Consultant, such insurance shall be in an amount not less than \$2,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. Subconsultants of Consultant shall obtain such insurance in an amount not less than \$1,000,000 per claim. Notwithstanding the foregoing, the Commission may consider written requests to lower or dispense with the errors and omissions liability insurance requirement contained in this Section for certain subconsultants of Consultant, on a case-by-case basis, depending on the nature and scope of the Services to be provided by the subconsultant. Approval of such request shall be in writing, signed by the Commission's Contract Administrator.

29.4 Aircraft Liability Insurance. Prior to conducting any Services requiring use of aircraft, Consultant shall procure and maintain, or cause to be procured and maintained, aircraft liability insurance or equivalent form, with a single limit as shall be required by the Commission. Such insurance shall include coverage for owned, hired and non-owned aircraft and passengers, and shall name, or be endorsed to name, the Commission, Caltrans and their directors, officials, officers, employees and agents as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant.

29.5 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) 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 the Commission, RCA, 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 the Commission's, RCA's 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) the Commission, RCA, 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 Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Commission, RCA, Caltrans and their 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, RCA, Caltrans and their 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.

(c) Workers' Compensation and Employers Liability Coverage.

(i) Consultant 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 the Commission, RCA, Caltrans and their 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.

(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 the Commission, RCA, Caltrans and their 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 the Commission. 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) Consultant shall provide the Commission at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant 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 Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the Commission 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. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant 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 Consultant, and any approval of said insurance by the Commission, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant 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, Commission has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Commission will be promptly reimbursed by Consultant or Commission will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Commission may cancel this Agreement. The Commission may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(viii) Neither the Commission, RCA 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.

29.6 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, RCA, their 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 expense.

29.7 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.

29.8 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.

29.9 Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the Commission that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the Commission as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, the Commission may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

29.10 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.

30. 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.

31. 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, other than a Cardinal Change. For purposes of this Agreement, a Cardinal Change is a change which is "outside the scope" of the Agreement; in other words, work which should not be regarded as having been fairly and reasonably within the contemplation of the parties when the Agreement was entered into. An example of a change which is not a Cardinal Change would be where, in a contract to construct a building there are many changes in the materials used, but the size and layout of the building remains the same. Cardinal Changes are not within the authority of this provision to order, and shall be processed by the Commission as "sole source" procurements according to applicable law, including the requirements of FTA Circular 4220.1D, paragraph 9(f).

(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.

## 32. Prohibited Interests.

32.1 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.

## 32.2 Consultant Conflict of Interest.

(a) Consultant shall disclose any financial, business, or other relationship with Commission that may have an impact upon the outcome of this

Agreement. Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

(b) Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

32.3 Commission 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.

32.4 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.

32.5 Covenant Against Contingent Fees. As required in connection with federal funding, the Consultant 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 the terms herein, 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.

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

32.7 Covenant Against Expenditure of Commission, State or Federal Funds for Lobbying. The Consultant certifies that to the best of his/ her knowledge and belief no state, federal or local agency appropriated funds have been paid, or will be paid by or on behalf of the Consultant to any person for the purpose of influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the

Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the award of any state or federal contract, grant, loan, or cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

(a) If any funds other than federal appropriated funds have been paid, or will be paid to any person for the purpose of influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this Agreement, the Consultant shall complete and submit the attached Exhibit "F", Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with the attached instructions.

(b) The Consultant's certification provided in this Section is a material representation of fact upon which reliance was placed when this Agreement was entered into, and is a prerequisite for entering into this Agreement pursuant to Section 1352, Title 31, US. Code. Failure to comply with the restrictions on expenditures, or the disclosure and certification requirements set forth in Section 1352, Title 31, US. Code may result in a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) The Consultant also agrees by signing this Agreement that he/she shall require that the language set forth in this Section be included in all Consultant subcontracts which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

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

33. 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.

34. Right to Employ Other Consultants. Commission and RCA reserve the right to employ other consultants in connection with the Project.

35. Governing Law. This Agreement shall be governed by and construed with the laws of the State of California. Venue shall be in Riverside County.

36. Disputes; Attorneys' Fees.



36.1 Prior to commencing any action hereunder, the Parties shall attempt in good faith to resolve any dispute arising between them. The pendency of a dispute shall not excuse Consultant from full and timely performance of the Services.

36.2. If the Parties are unable to resolve a dispute after attempting in good faith to do so, the Parties may seek any other available remedy to resolve the dispute. 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.

37. Time of Essence. Time is of the essence for each and every provision of this Agreement.

38. 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.

39. 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:**

CBRE, Inc.  
5921 Owensmouth Avenue  
Woodland Hills, CA 91367

Attn: Beth B. Finestone

**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.

40. 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. Notwithstanding the foregoing, if any provision of this Agreement conflicts in any way with a state or federal requirement, as directed by the Commission (i) the state or federal requirement shall govern; or (ii) the more stringent requirement shall apply.

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

42. 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.

43. 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.

44. Provisions Applicable When State Funds or Federal Funds Are Involved. When funding for the Services under a Task Order is provided, in whole or in part, from Caltrans or other State funding source, Consultant shall also fully and adequately comply with the provisions included in Exhibit "C" (California Department of Transportation requirements) attached hereto and incorporated herein by reference. When funding for the Services under a Task Order is provided, in whole or in part, from the FHWA, Consultant shall also fully and adequately comply with the provisions included in Exhibit "D" (FHWA Requirements) attached hereto and incorporated herein by reference. When funding for the Services under a Task Order is provided, in whole or in part, from the FTA, Consultant shall also fully and adequately comply with the provisions included in Exhibit "F" (FTA Requirements) attached hereto and incorporated herein by reference.

45. 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, shall survive any such expiration or termination.

46. No Third Party Beneficiaries. RCA and Caltrans are intended third party beneficiaries of any right or benefit granted to RCA or Caltrans, respectively, under this Agreement. Except as set forth in the foregoing sentence, there are no other intended third party beneficiaries of any right or obligation assumed by the Parties.

47. Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

48. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

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

50. 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.

51. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties, and shall not be assigned by Consultant without the prior written consent of Commission.

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

53. 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.

55. Electronically Transmitted Signatures; Electronic Signatures. 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 this Agreement for all purposes. This Agreement may be signed using an electronic signature.

**[Signatures on following page]**

**SIGNATURE PAGE  
TO  
PROFESSIONAL SERVICES AGREEMENT  
WITH STATE AND FHWA FUNDING/ASSISTANCE**

**ON CALL RIGHT OF WAY APPRAISAL AND APPRAISAL REVIEW SERVICES**

**IN WITNESS WHEREOF**, this Agreement was executed on the date first written above.

<p><b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b></p> <p>By: _____  <b>[INSERT NAME]</b>  Chair</p> <p><i>Approved as to Form:</i></p> <p>By: _____  Best, Best &amp; Krieger LLP  General Counsel</p>	<p><b>CONSULTANT CBRE, INC.</b></p> <p>By: _____  Signature</p> <p>_____</p> Name <p>_____</p> Title <p><b>ATTEST:</b></p> <p>By: _____</p> <p>Its: _____</p>
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\* 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.

**EXHIBIT "A"  
SCOPE OF SERVICES**

**[attached behind this page]**

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**EXHIBIT A-1**  
**SCOPE OF SERVICES**  
**RIGHT OF WAY APPRAISAL SERVICES**

The Riverside County Transportation Commission (Commission) has selected Consultant (Consultant or Appraiser) as part of an on-call bench of firms engaged to provide right of way appraisal services for developed or undeveloped residential, commercial, industrial, agricultural and railroad properties. Consultant shall produce appraisal reports for full or partial acquisitions, easements, temporary construction easements, leased or licensed properties, and sale or disposition of excess/surplus properties, as required by the Commission. Services shall be provided on an oncall/ as needed basis in support of current and future Commission Projects, Measure A Projects and projects done in partnership with other agencies, pursuant to Task Orders issued in the sole discretion of the Commission.

Task Orders shall be awarded through an additional qualification-based selection process.

Such appraisal services may include, but are not limited to, the following work program and must comply with the requirements below, as applicable:

1. Consultant shall prepare appraisals in accordance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and implemented by 49 CFR Part 24; the State of California Government Code, the State of California Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Code of Regulations Ch 6, Art 1, Section 6000 et seq.), the California Code of Civil Procedure, the Uniform Standards of Professional Appraisal Practice (USPAP), and in some cases, the Uniform Appraisal Standards for Federal Land Acquisition Act. Consultant must be licensed by the State of California.

2. Consultant shall prepare appraisals in accordance with the Uniform Appraisal Standards for Federal Land Acquisition ("Yellow Book"). Consultant must be

licensed by the State of California.

3. Consultant must be qualified to provide expert witness testimony and defend the opinions or conclusions reached in the appraisal at any Administrative or Judicial proceeding.

4. Deliverables shall typically consist of three (3) originals of the completed appraisal report and one (1) electronic copy, specialty reports and component valuations which may be performed by someone other than Consultant and incorporated into the overall fair market valuation.

5. Consultant may be required to meet with and coordinate their efforts with Commission staff, Commission legal counsel, and other consultants or Caltrans staff; participate in office or project site meetings.

6. Appraisal reports may be reviewed for acceptance and approval by Commission's review appraisers and Caltrans. Revisions may be required by reason of this review process. Consultants may be requested to complete and deliver revised and/or updated appraisals. In the event of non-acceptance due to errors or omissions, Consultant shall have fifteen (15) calendar days to make corrections and return the revised appraisals to the review appraiser.

7. For proposed acquisitions, the owner of the real property or a designated representative will be invited by the Appraiser to accompany the Appraiser during the inspection of the property. This invitation must be in the form of a letter entitled "Notice to Appraise" written by the Appraiser to the owner. A copy of the invitation will be included in the appraisal report.

8. It is the Appraiser's responsibility to contact the Commission's project engineers for discussion and/or clarification of the Construction in the Manner Proposed. This is critical in the appraisal of partial acquisitions and easements where the Appraiser may need cross sections or other project engineering information to complete the report.

9. The highest and best use for the property in the before condition must be determined and supported. If a partial acquisition is involved, the highest and best use of the property in the after condition must be determined and

supported. If the existing use is not the premise on which the valuation is based, the appraisal will contain an explanation justifying the determination that the property is available and adaptable for a different highest and best use and there is demand for that use in the market.

10. Where the acquisition involves only a part (or portion) of the property, the Appraiser will estimate any severance damages and special benefits to the remainder, including reasoning and market data to support the opinion or conclusion. The Appraiser will indicate if the remainder constitutes an economic or uneconomic unit in the market and/or to the present owner.

11. The California Eminent Domain Law will be followed in partial acquisitions. Special benefits are to be offset only against damages to the remainder in accordance with the law.

12. Appraisal for easement acquisitions will reflect the restrictive elements of the easement to be acquired and the potential effect of such elements on the utility of the property considering its highest and best use. Full details with respect to any interference with the highest and best use of the property affected must be explained and supported.

13. The Appraiser must estimate and support the economic rent, state the contract rent and the remaining term of the lease as of the date of value. Lessor and lessee responsibilities for paying major expenses, e.g., taxes, insurance and maintenance shall be included.

14. Appraiser shall itemize in detail the "improvements pertaining to realty" (Eminent Domain Law-CCP Section 1263.205) showing their replacement cost new, depreciated value in place, salvage value if any, and relocation estimate. To the extent possible, determine the ownership claims of the Improvements Pertaining to the Realty.

15. In cases where the Appraisal Assignment requires a Specialty Appraisal (Furniture, Fixtures, Machinery and Equipment) and/or Specialists Reports (title, survey, soils, engineering), Appraiser shall utilize the services of Commission's On-Call Consultants for such services or obtain Commission's



prior approval for any others. Fees charged by Commission's On-Call Consultants for Specialty Appraisal and/or Specialists Reports shall be paid directly by the Commission.

16. It is the Appraiser's responsibility to thoroughly review the Specialty Appraisal for adoption (with adjustments or not, as appropriate) and inclusion in the overall appraisal. The estimated values that the specialty items contribute to the overall value of the real estate will be separately stated but included in the total value of the property.

17. If any legal issues exist during the appraisal assignment, Appraiser shall request legal opinion. All legal opinions shall be rendered by Commission's legal counsel.

18. It is the Appraiser's responsibility to contact the Commission's legal counsel, if necessary, for discussion and/or clarification in identifying personal or real property.

19. If hazardous waste is discovered on the property, Appraiser shall seek further direction from the Commission.

**EXHIBIT A-2**  
**SCOPE OF SERVICES**  
**RIGHT OF WAY APPRAISAL REVIEW SERVICES**

The Riverside County Transportation Commission (Commission) has procured one or more Consultants (Consultant/Review Appraiser) to provide Appraisal Review Services on an On-Call/as needed basis in support of current Commission Projects, Measure A Projects, and projects done in partnership with other agencies, pursuant to Task Orders issued in the sole discretion of the Commission.

Task Orders shall be awarded through an additional qualification-based selection process. Such review appraisal services may include, but are not limited to, the following work programs, and/or comply with applicable requirements below:

1. When required by the Commission, Review Appraiser shall examine appraisals prepared by Commission's On-Call Residential, Commercial, Industrial, Railroad, and/or Agricultural appraisers.
2. When required by the Commission, Review Appraiser shall examine appraisals submitted by the property owners and comment by memorandum on the findings.
3. Review Appraiser shall provide Appraisal Review Services based on nationally recognized appraisal standards and techniques, including those established by the Uniform Standards of Professional Appraisal Practice (USPAP), the Uniform Appraisal Standards for Federal Land Acquisition; ensure compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and implemented by 49 CFR Part 24; the State of California Government Code, the State of California Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Code of Regulations CH 6, Art 1, Section 6000 et seq.), and the California Code of Civil Procedure. Comply with the requirements of the Caltrans Right of Way Manual, when applicable. Consultants must be licensed by the State of California.
4. Review Appraiser shall provide Appraisal Review Services to ensure compliance for appraisals prepared in accordance with the Uniform Appraisal Standards for Federal Land Acquisition ("Yellow Book"), Consultant must be licensed by the State of

California.

5. Review Appraiser must be qualified to provide expert witness testimony and defend the conclusions at any Administrative or Judicial proceeding.

6. Review Appraiser may be required to meet with and coordinate their efforts with Commission staff, Commission legal counsel, other consultants, or Caltrans staff; participate in office or project site meetings.

7. It is the Review Appraiser's responsibility to contact Commission's project engineers for discussion and/or clarification of any project design matters. This is critical in reviewing appraisals of partial acquisitions and easements where engineering information must be verified.

8. Review Appraiser shall examine appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

9. Appraisal Review reports may be reviewed for acceptance by Caltrans or other approving agencies.

10. If the Review Appraiser is unable to recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation or market value, and it is determined that it is not practical to obtain additional appraisal, Review Appraiser may develop appraisal documentation to recommend value.

11. The Review Appraiser and the Appraiser should discuss the appraisal assignment as soon work is assigned. The Review Appraiser and, if practical, the Appraiser should hold at least one field review to identify any legal issues that may exist. If any legal issues exist; the Review Appraiser shall request legal opinion.

12. All legal opinions shall be rendered by Commission's legal counsel and the appraisal prepared in accordance therewith.

13. The Review Appraiser's certification of the recommended value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation. Any damages or benefits to any remaining property shall also be identified in the statement.

14. All reports and deliverables shall typically consist of one (1) original and one (1)

electronic copy, including specialty reports which may be prepared by other consultants.

15. In cases where the assignment requires other services, subject to Commission authorization, Review Appraiser shall utilize the services of Commission's On-Call Consultants. Fees charged by Commission's On-Call Consultants shall be paid directly by Commission.

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**EXHIBIT "B"**  
**COMPENSATION AND PAYMENT**

**[attached behind this page]**

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**EXHIBIT "B"**

**COMPENSATION SUMMARY<sup>1</sup>**

<b>FISCAL YEAR</b>	<b>PROJECT</b>	<b>COST</b>
FY 2024/25	Services	\$ 50,000.00
FY 2025/26	Services	307,500.00
FY 2026/27	Services	307,500.00
FY 2027/28	Services	307,500.00
FY 2028/29	Services	307,500.00
	<b>SUBTOTAL</b>	<b>1,280,000.00</b>
	<b>OTHER DIRECT COSTS</b>	<b>5,000.00</b>
	<b>TOTAL COSTS</b>	<b>\$ 1,285,000.00</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.

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**TO BE INSERTED FROM RFP:**

**EXHIBIT “C” CALTRANS/STATE REQUIREMENTS**

**EXHIBIT “D” FHWA/CALTRANS REQUIREMENTS**

**EXHIBIT “F” FTA REQUIREMENTS**

**EXHIBIT “G” – LOBBYING ACTIVITIES DISCLOSURE**

**TO BE INSERTED FROM CONSULTANT PROPOSAL:**

**EXHIBIT “H” – DBE COMMITMENT FORM**

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**EXHIBIT "E"**

**CERTIFICATE OF CONSULTANT AND  
EXECUTIVE ORDER N-6-22 CERTIFICATION**

**[attached behind this page]**

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## CERTIFICATE OF CONSULTANT

I HEREBY CERTIFY that I am the \_\_\_\_\_ and duly authorized representative of the firm of \_\_\_\_\_ whose address is \_\_\_\_\_, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement; nor
- (b) agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the agreement; nor
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this agreement involving participation of Federal-aid Highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

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

Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**EXECUTIVE ORDER N-6-22 CERTIFICATION**

Executive Order N-6-22 issued by Governor Gavin Newsom on March 4, 2022, directs all agencies and departments that are subject to the Governor’s authority to (a) terminate any contracts with any individuals or entities that are determined to be a target of economic sanctions against Russia and Russian entities and individuals; and (b) refrain from entering into any new contracts with such individuals or entities while the aforementioned sanctions are in effect.

Executive Order N-6-22 also requires that any contractor that: (1) currently has a contract with the Riverside County Transportation Commission (“Commission”) funded through grant funds provided by the State of California; and/or (2) submits a bid or proposal or otherwise proposes to or enter into or renew a contract with the Commission with State of California grant funds, certify that the person is not the target of any economic sanctions against Russia and Russian entities and individuals.

The contractor hereby certifies, SUBJECT TO PENALTY FOR PERJURY, that a) the contractor is not a target of any economic sanctions against Russian and Russian entities and individuals as discussed in Executive Order N-6-22 and b) the person signing below is duly authorized to legally bind the Contractor. This certification is made under the laws of the State of California.

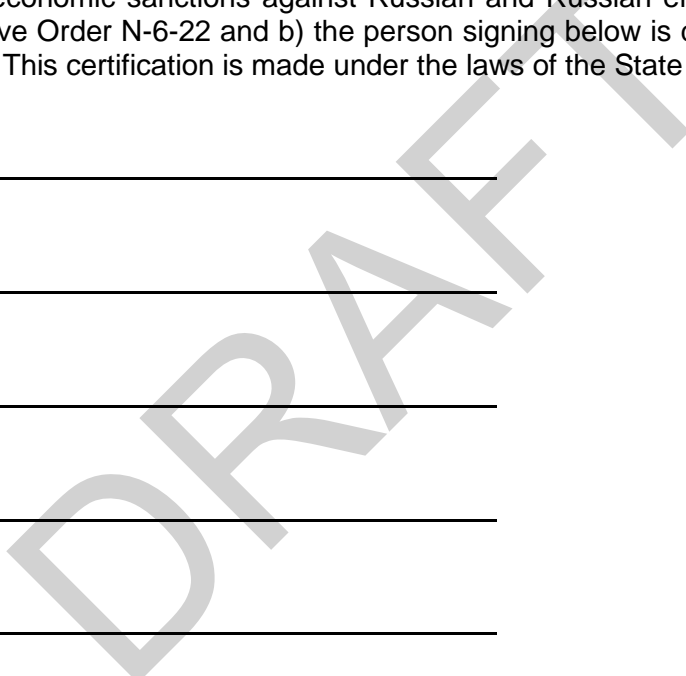
Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Date: \_\_\_\_\_



## Agreement No. 25-31-048-00

**PROFESSIONAL SERVICES AGREEMENT  
WITH FHWA AND STATE FUNDING ASSISTANCE**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
R.P. LAURAIN & ASSOCIATES, INC.  
FOR ON-CALL  
RIGHT OF WAY APPRAISAL AND  
APPRAISAL REVIEW SERVICES**

**Parties and Date.**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2025, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and R.P. LAURAIN & ASSOCIATES. ("Consultant"), a CORPORATION. The Commission and Consultant are sometimes referred to herein individually as "Party", and collectively as the "Parties".

**Recitals.**

A. 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").

B. 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.

C. 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.

D. The Western Riverside County Regional Conservation Authority ("RCA") is a Joint Powers Authority ("JPA") comprised of the County and eighteen cities in the western portion of the County.

E. Pursuant to an Implementation and Management Services Agreement between the Commission and RCA, the Commission provides management services on behalf of RCA, and may contract with consultants to provide services for RCA.

F. The sources of funding for payment for on-call professional consulting services provided under this Agreement may include the following funding sources:

Measure A, State Transportation Improvement Program,  
Federal Highway Administration (FHWA), Federal Transit

Administration (FTA), Transportation Uniform Mitigation Fees, or RCA reimbursements.

This Agreement shall not be deemed to be approved by the Commission until the certifications shown in Exhibit "E" attached hereto and incorporated herein by reference, is executed. Consultant shall comply with all funding source requirements as further set forth in this Agreement and the attached exhibits.

G. Consultant desires to perform and assume responsibility for the provision of certain on-call right of way appraisal and appraisal review services for projects in the County of Riverside, California. Services shall be provided for the Commission or for the benefit of RCA, as directed, on the terms and conditions set forth in this Agreement and in the task order(s) to be solicited, awarded and authorized by Commission as further described in this Agreement ("Task Order"). Consultant represents that it is experienced in providing such services to public clients, is licensed in the State of California (if necessary), and is familiar with the plans of the Commission.

H. Commission desires to engage Consultant to render such services on an on-call basis. Services shall be ordered by Task Order(s) to be issued pursuant to this Agreement for future projects as set forth herein and in each Task Order (each such project shall be designated a "Project" under this Agreement).

## **Terms.**

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 on-call right of way appraisal and appraisal review services for the Projects ("Services"). The Services are generally described in Exhibit "A" attached hereto and incorporated herein by reference. The Services shall be more particularly described in the individual Task Orders issued by the Commission's Executive Director or designee. No Services shall be performed unless authorized by a Task Order. All Services shall be subject to, and performed in accordance with, this Agreement, the relevant Task Order, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

2. Task Orders; Commencement of Services; Schedule of Services. Services under this Agreement shall be requested by the Commission pursuant to Task Order requests. If Commission accepts Consultant's Task Order proposal, Commission shall issue a purchase order or executed task order for the Services ("Commission's Task Order Authorization"). Consultant's agreement to the final terms of a proposed Task Order, Commission's Task Order Authorization and Consultant's commencement of the Services shall indicate the Parties' agreement to the terms of the relevant Task Order.

Consultant shall commence Services under a Task Order within five (5) days of receiving Commission's Task Order Authorization.

Consultant shall perform the Services expeditiously, in accordance with any schedule for the Services set forth in a Task Order (“Schedule of Services”). Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, Commission shall respond to Consultant's submittals in a timely manner. Upon request of the Commission, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

Task Orders may not be used to amend the language (or the terms) of this Agreement nor to exceed the scope of work under this Agreement.

3. Pre-Award Audit. As a result of the funding for this Project, and to the extent Caltrans procedures apply in connection therewith, issuance of a “Notice to Proceed” or other authorization to proceed under a Task Order may be contingent upon completion and approval of a pre-award audit. Any questions raised during the pre-award audit shall be resolved before Services are commenced under a Task Order. The funding provided under this Agreement is contingent on meeting all funding requirements and could be withdrawn, thereby entitling the Commission to terminate this Agreement, if the procedures are not completed. The Consultant's files shall be maintained in a manner to facilitate State process reviews. In addition, Caltrans may require that prior to performance of any work for which funding reimbursement through Caltrans is requested and provided, that Caltrans must give to Commission an “Authorization to Proceed”.

4. Audit Procedures.

4.1 Consultant and certain subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an Independent Cost Review (ICR) Audit, or a CPA ICR audit work paper review. If selected for audit or review, this Agreement, Consultant's cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. This Agreement, Consultant's cost proposal, and ICR shall be adjusted by Consultant and approved by the Commission's contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into this Agreement by this reference if directed by Commission at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of the Agreement terms and cause for termination of this Agreement and disallowance of prior reimbursed costs. Additional audit provisions applicable to this Agreement are set forth in Sections 22 and 23 of this Agreement.

Section 4.2 and 4.3 shall apply to the extent applicable to the Task Order and funding source.

4.2 During any Caltrans' review of the ICR audit work papers created by the Consultant's independent CPA (which may include review by the Independent Office of Audits and Investigations), Caltrans will work with the CPA and/or Consultant toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans identifies significant issues during the review and is unable to issue a cognizant approval letter, Commission will reimburse the Consultant at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines is received and approved by Caltrans.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
- b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
- c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.

4.3 If Caltrans is unable to issue a cognizant letter per Section 4.2 above, Caltrans may require Consultant to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the Caltrans' management letter. Caltrans will then have up to six (6) months to review the Consultant's and/or the independent CPA's revisions.

If the Consultant fails to comply with the provisions of this Section 4, or if Caltrans is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in Section 4.2 above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this Agreement.

Consultant may submit to Commission final invoice only when all of the following items have occurred: (1) Caltrans accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this Agreement has been completed to the satisfaction of Commission; and, (3) Caltrans has issued its final ICR review letter. The Consultant must submit its final invoice to Commission no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this Agreement and all Task Orders issued under this Agreement, and all other agreements executed between the Commission and the Consultant, either as a prime or subconsultant, with the same fiscal period ICR.

5. Term.

5.1 This Agreement shall go into effect on the date first set forth above, contingent upon approval by Commission, and shall remain in effect for three (3) years, unless extended by contract amendment. The Commission may extend the term of this Agreement, in its sole discretion, for two (2) additional one (1) year period(s). The maximum term of this Agreement, including all option terms, shall not exceed five (5) years. No Task Order shall extend beyond the expiration date of this Agreement.

5.2 Consultant is advised that any recommendation for contract award is not binding on Commission until this Agreement is fully executed and approved by the Commission.

5.3 This Agreement shall remain in effect until the date set forth above, 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.

6. Commission's Contract Administrator. The Commission hereby designates the Commission's Executive Director, or his or her designee, to act as its Contract Administrator for the performance of this Agreement ("Commission's Contract Administrator"). Commission's Contract Administrator shall have the authority to act on behalf of the Commission for all purposes under this Agreement. Commission's Contract Administrator 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 Contract Administrator or his or her designee.

7. Consultant's Representative. Consultant hereby designates **John P. Laurain, President** 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 or her 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 Contract Administrator 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 Contract Administrator.

8. 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 herein. The key personnel for performance of this Agreement are: **John P. Laurain, President; and Benjamin V. Balos, Senior Appraiser;**, or as otherwise identified in the Task Order.

9. Standard of Care; License. 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 and RCA 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.

10. 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. Consultant hereby indemnifies and holds the Commission and RCA harmless, pursuant to the indemnification provisions contained in this Agreement, from any and all claims that may be made against the Commission based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.



## 11. Project Progress.

11.1 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 Contract Administrator.

11.2 Trend Meetings. Consultant shall conduct trend meetings with the Commission's Contract Administrator 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.

11.3 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.

## 12. Delay in Performance.

12.1 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, pandemics, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather, performance of such act shall be excused for the period of such delay.

12.2 Written Notice. If Consultant believes it is entitled to an extension of time due to conditions set forth in subsection 12.1, 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.

12.3 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.

13. 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 Contract Administrator 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 Federal funding. In the event that Commission's Contract Administrator, in his or her sole discretion, determines the formally submitted work product to be not in accordance with the standard of care established under this Agreement, Commission's Contract Administrator may require Consultant to revise and resubmit the work at no cost to the Commission.

14. 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.

15. Opportunity to Cure; Inspection of Work. 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. Consultant shall allow the Commission's Contract Administrator and Caltrans to inspect or review Consultant's work in progress at any reasonable time.

16. Final Acceptance. Upon determination by the Commission that Consultant has satisfactorily completed the Services required under this Agreement and within the term set forth herein 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.

17. 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 the United States Department of Transportation. For example, and not by way of limitation, a signed Categorical Exclusion, Finding of No Significant Impact, or published Record of Decision may be required to be approved and/or completed by the United States Department of Transportation. For Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such 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, RCA and their 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.

## 18. Fees and Payment.

18.1 The method of payment for this Agreement will be based specific rates of compensation. Consultant will be reimbursed for hours worked at the hourly rates specified in the Consultant's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

18.2 In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order.

18.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's approved Cost Proposal.

18.4 Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. Consultant will be responsible for transportation and subsistence costs in excess of State rates.

18.5 When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

18.6 Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred. No payment will be made prior to approval or for any work performed prior to approval of this Agreement, or prior to issuance of a Task Order.

18.7 Consultant will be reimbursed within thirty (30) days upon approval by Commission's Contract Administrator of itemized invoices submitted by Consultant. Separate invoices itemizing all costs are required for all work performed under each Task

Order. Commission's Contract Administrator shall notify Consultant of any disputed items contained in an invoice, and payment for such items shall be withheld pending resolution of the Commission's concerns.

18.8 Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number.

Invoices shall be mailed to Commission's Contract Administrator at the following address:

Riverside County Transportation Commission  
Attention: Accounts Payable  
P.O. 12008  
Riverside, CA 92502

18.9 The total amount payable by Commission for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment. If Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

18.10 Commission has or will enter into six (6) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("On-Call Right of Way Contracts"). The other On-Call Right of Way Contracts are **Bender Rosenthal, Inc., 25-31-008-00; CBRE, Inc., 25-31-046-00; Hawran & Malm LLC, 25-31-047-00; Riggs & Riggs, Inc., 23-31-049-00, and Thompson and Thompson Real Estate Valuation and Consulting, Inc., 25-31-050-00**. The total amount payable by Commission for the On-Call Right of Way Contracts shall not exceed a cumulative maximum total value of Seven Hundred Seventy-One Thousand Dollars (\$771,000) ("NTE Sum"). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the On-Call Right of Way Contracts through Task Orders. Each time a Task Order is awarded under any of the On-Call Right of Way Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the On-Call Right of Way Contracts. The notice must identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Commission must not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant must not enter into a Task Order that exceeds the NTE Sum.

18.11 All subcontracts in excess of \$25,000 shall contain the above provisions.

19. Disputes.

19.1 Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by mutual agreement of the Parties shall be decided by a committee consisting of RCTC's Contract Administrator and the Director of Capital Projects, who may consider written or verbal information submitted by Consultant.

19.2 Not later than 30 days after completion of all Services under this Agreement, Consultant may request review by the Commission's Executive Director of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

19.3 Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this Agreement.

20. Termination; Suspension.

20.1 Commission reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant, for any or no reason, with the reasons for termination stated in the notice. Commission may terminate Services under a Task Order, at any time, for any or no reason, with the effective date of termination to be specified in the notice of termination of Task Order.

20.2 Commission may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, Commission may proceed with the Services in any manner deemed proper by Commission. If Commission terminates this Agreement with Consultant, Commission shall pay Consultant the sum due to Consultant under this Agreement for Services completed and accepted prior to termination, unless the cost of completion to Commission exceeds the funds remaining in the Agreement. In such case, the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

20.3 In addition to the above, payment upon termination 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 Contract Administrator 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

20.4 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.

20.5 In addition to the above, 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 this Agreement. Termination of this Agreement for cause may be considered by the Commission in determining whether to enter into future agreements with Consultant.

20.6 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.

20.7 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.

20.8 Consultant may not terminate this Agreement except for cause.

21.9 In addition to the termination rights above, Commission may temporarily suspend this Agreement or Services under any Task Order, at no additional cost to Commission, provided that Consultant is given written notice of temporary suspension. If Commission gives such notice of temporary suspension, Consultant shall immediately suspend its activities under the relevant Task Order(s). A temporary suspension may be issued concurrent with a notice of termination.

## 21. Cost Principles and Administrative Requirements.

21.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

21.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

21.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to Commission.

21.4 All subcontracts in excess of \$25,000 shall contain the above provisions.

22. Retention of Records/Audit. For the purpose of determining compliance with, as applicable, 2 CFR Part 200, Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and

other matters connected with the performance of this Agreement pursuant to Government Code 8546.7; Consultant, subconsultants, and Commission shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering this Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under this Agreement. The State, State Auditor, Commission, or any duly authorized representative of the State or Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to this Agreement and, if applicable, indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

22.1 Accounting System. Consultant 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 Consultant 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.

23. Audit Review Procedures.

23.1 Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by Commission's Chief Financial Officer.

23.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by Commission's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

23.3 Neither the pendency of a dispute nor its consideration by Commission shall excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.

24. Subcontracting.

24.1 Nothing contained in this Agreement or otherwise, shall create any contractual relation between Commission and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to Commission and RCA for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from Commission's obligation to make payments to the Consultant.

24.2 Consultant shall perform the Services contemplated with resources available within its own organization and no portion of the Services pertinent to this Agreement shall be subcontracted without written authorization by Commission's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

24.3 Consultant shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to Consultant by Commission.

24.4 Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.

24.5 Any substitution of subconsultant(s) must be approved in writing by Commission's Contract Administrator prior to the start of work by the subconsultant(s).

24.6 Exhibit "B" may set forth the rates at which each subconsultant shall bill the Consultant for Services and that are subject to reimbursement by the Commission to Consultant. Additional Direct Costs, as defined in Exhibit "B" shall be the same for both the Consultant and all subconsultants, unless otherwise identified in Exhibit "B" or in a Task Order. The subconsultant rate schedules and cost proposals contained herein are for accounting purposes only.

## 25. Equipment Purchase

25.1 Prior authorization, in writing, by Commission's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract for supplies, equipment, or services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

25.2 For purchase of any item, service or consulting work not covered in the Cost Proposal and exceeding \$5,000 prior authorization, in writing, by Commission's Contract Administrator is required. Three competitive quotations must be submitted with the request for such purchase, or the absence of bidding must be adequately justified.

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



terms and conditions of such sale must be approved in advance by Commission. 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the Project.

25.4 All subcontracts in excess \$25,000 shall contain the above provisions.

26. Labor Code Requirements.

26.1 Prevailing Wages.

(a) If applicable, Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the Services.

(b) When prevailing wages apply to the Services described in the Scope of Services, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

(c) Copies of the prevailing rate of per diem wages in effect at commencement of this Agreement 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, RCA and their 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.

26.2 DIR Registration. If the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

26.3 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 Consultant or the Services are not subject to the Eight-Hour Law. Consultant shall forfeit to Commission 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 Consultant or the Services are not subject to the Eight-Hour Law.

26.4 Employment of Apprentices. This Agreement shall not prevent the employment of properly indentured apprentices in accordance with the California Labor Code, and no employer or labor union shall refuse to accept otherwise qualified employees as indentured apprentices on the work performed hereunder solely on the ground of race, creed, national origin, ancestry, color or sex. Every qualified apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which he or she is employed and shall be employed only in the craft or trade to which he or she is registered.

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

The parties expressly understand that the responsibility for compliance with provisions of this Section and with Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code in regard to all apprenticeable occupations lies with Consultant

27. Ownership of Materials/Confidentiality.

27.1 Documents & Data. This Agreement creates an exclusive and perpetual license for Commission and RCA 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 and RCA are 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 or RCA.

Commission and RCA 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 and RCA's sole risk.

27.2 Intellectual Property. In addition, Commission and RCA 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 and RCA 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.

27.3 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 or RCA'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.

27.4 Infringement Indemnification. Consultant shall defend, indemnify and hold the Commission, RCA, their directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by Commission or RCA of the Documents & Data, including any method, process, product, or concept specified or depicted.

28. Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold Commission, RCA, Caltrans and their 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, inverse condemnation, and any claims related to property acquisition and relocation rules or failure to detect or abate hazardous materials, which are brought by a third party, and which , in any manner arise out of or are 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, RCA, Caltrans, and their directors, officials, officers, employees, consultants, agents, or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Commission, RCA, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission, RCA, Caltrans and their 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, RCA, Caltrans or their directors, officials officers, employees, consultants, agents, or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful

misconduct of the Consultant and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

## 29. Insurance.

29.1 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 a form and with insurance companies acceptable to the Commission. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this Section.

29.2 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 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. Consultant shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit. Limits may be achieved by any combination of primary and excess or umbrella liability insurance; (2) *Automobile Liability*: \$2,000,000 per accident for bodily injury and property damage. Limits may be achieved by any combination of primary and excess or umbrella liability insurance; and (3) *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.

29.3 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. For Consultant, such insurance shall be in an amount not less than \$2,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically

designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. Subconsultants of Consultant shall obtain such insurance in an amount not less than \$1,000,000 per claim. Notwithstanding the foregoing, the Commission may consider written requests to lower or dispense with the errors and omissions liability insurance requirement contained in this Section for certain subconsultants of Consultant, on a case-by-case basis, depending on the nature and scope of the Services to be provided by the subconsultant. Approval of such request shall be in writing, signed by the Commission's Contract Administrator.

29.4 Aircraft Liability Insurance. Prior to conducting any Services requiring use of aircraft, Consultant shall procure and maintain, or cause to be procured and maintained, aircraft liability insurance or equivalent form, with a single limit as shall be required by the Commission. Such insurance shall include coverage for owned, hired and non-owned aircraft and passengers, and shall name, or be endorsed to name, the Commission, Caltrans and their directors, officials, officers, employees and agents as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant.

29.5 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) 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 the Commission, RCA, 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 the Commission's,

RCA's 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) the Commission, RCA, 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 Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Commission, RCA, Caltrans and their 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, RCA, Caltrans and their 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.

(c) Workers' Compensation and Employers Liability Coverage.

(i) Consultant 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 the Commission, RCA, Caltrans and their 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.

(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 the Commission, RCA, Caltrans and their 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 the Commission. 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) Consultant shall provide the Commission at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant 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 Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the Commission 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. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant 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 Consultant, and any approval of said insurance by the Commission, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant 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, Commission has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Commission will be promptly reimbursed by Consultant or Commission will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Commission may cancel this Agreement. The Commission may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(viii) Neither the Commission, RCA 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.

29.6 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, RCA, their 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 expense.

29.7 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.

29.8 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.

29.9 Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the Commission that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the Commission as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, the Commission may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

29.10 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.

30. 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.

31. 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, other than a Cardinal Change. For purposes of this Agreement, a Cardinal Change is a change which is "outside the scope" of the Agreement; in other words, work which should not be regarded as having been fairly and reasonably within the contemplation of the parties when the Agreement was entered into. An example of a change which is not a Cardinal Change would be where, in a contract to construct a building there are many changes in the materials used, but the size and layout of the building remains the same. Cardinal Changes are not within the authority of this provision to order, and shall be processed by the Commission as "sole source" procurements according to applicable law, including the requirements of FTA Circular 4220.1D, paragraph 9(f).

(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.

### 32. Prohibited Interests.

32.1 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.

### 32.2 Consultant Conflict of Interest.

(a) Consultant shall disclose any financial, business, or other relationship with Commission that may have an impact upon the outcome of this Agreement. Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

(b) Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

32.3 Commission 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.

32.4 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.

32.5 Covenant Against Contingent Fees. As required in connection with federal funding, the Consultant 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 the terms herein, 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.

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

32.7 Covenant Against Expenditure of Commission, State or Federal Funds for Lobbying. The Consultant certifies that to the best of his/ her knowledge and belief no state, federal or local agency appropriated funds have been paid, or will be paid by or on behalf of the Consultant to any person for the purpose of influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the award of any state or federal contract, grant, loan, or cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

(a) If any funds other than federal appropriated funds have been paid, or will be paid to any person for the purpose of influencing or attempting to influence

an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this Agreement, the Consultant shall complete and submit the attached Exhibit "F", Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with the attached instructions.

(b) The Consultant's certification provided in this Section is a material representation of fact upon which reliance was placed when this Agreement was entered into, and is a prerequisite for entering into this Agreement pursuant to Section 1352, Title 31, US. Code. Failure to comply with the restrictions on expenditures, or the disclosure and certification requirements set forth in Section 1352, Title 31, US. Code may result in a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) The Consultant also agrees by signing this Agreement that he/she shall require that the language set forth in this Section be included in all Consultant subcontracts which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

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

33. 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.

34. Right to Employ Other Consultants. Commission and RCA reserve the right to employ other consultants in connection with the Project.

35. Governing Law. This Agreement shall be governed by and construed with the laws of the State of California. Venue shall be in Riverside County.

36. Disputes; Attorneys' Fees.

36.1 Prior to commencing any action hereunder, the Parties shall attempt in good faith to resolve any dispute arising between them. The pendency of a dispute shall not excuse Consultant from full and timely performance of the Services.

36.2. If the Parties are unable to resolve a dispute after attempting in good faith to do so, the Parties may seek any other available remedy to resolve the dispute. 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.

37. Time of Essence. Time is of the essence for each and every provision of this Agreement.

38. 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.

39. 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:**

R.P. Laurain & Associates, Inc.  
3353 Linden Avenue  
Ste. 200  
Long Beach, CA 90807  
Attn: John P. Laurain

**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.

40. 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. Notwithstanding the foregoing, if any provision of this Agreement conflicts in any way with a state or federal requirement, as directed by the Commission (i) the state or federal requirement shall govern; or (ii) the more stringent requirement shall apply.

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

42. 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.

43. 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.

44. Provisions Applicable When State Funds or Federal Funds Are Involved. When funding for the Services under a Task Order is provided, in whole or in part, from Caltrans or other State funding source, Consultant shall also fully and adequately comply with the provisions included in Exhibit "C" (California Department of Transportation requirements) attached hereto and incorporated herein by reference. When funding for the Services under a Task Order is provided, in whole or in part, from the FHWA, Consultant shall also fully and adequately comply with the provisions included in Exhibit "D" (FHWA Requirements) attached hereto and incorporated herein by reference. When funding for the Services under a Task Order is provided, in whole or in part, from the FTA, Consultant shall also fully and adequately comply with the provisions included in Exhibit "F" (FTA Requirements) attached hereto and incorporated herein by reference.

45. 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, shall survive any such expiration or termination.

46. No Third Party Beneficiaries. RCA and Caltrans are intended third party beneficiaries of any right or benefit granted to RCA or Caltrans, respectively, under this Agreement. Except as set forth in the foregoing sentence, there are no other intended third party beneficiaries of any right or obligation assumed by the Parties.

47. Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

48. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

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

50. 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.

51. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties, and shall not be assigned by Consultant without the prior written consent of Commission.

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

53. 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.

55. Electronically Transmitted Signatures; Electronic Signatures. 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 this Agreement for all purposes. This Agreement may be signed using an electronic signature.

**[Signatures on following page]**

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**SIGNATURE PAGE  
TO  
PROFESSIONAL SERVICES AGREEMENT  
WITH STATE AND FHWA FUNDING/ASSISTANCE**

**ON CALL RIGHT OF WAY APPRAISAL AND APPRAISAL REVIEW SERVICES**

**IN WITNESS WHEREOF**, this Agreement was executed on the date first written above.

<p><b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b></p> <p>By: _____  <b>[INSERT NAME]</b>  Chair</p> <p><i>Approved as to Form:</i></p> <p>By: _____  Best, Best &amp; Krieger LLP  General Counsel</p>	<p><b>CONSULTANT R.P. Laurain &amp; Associates, Inc.</b></p> <p>By: _____  Signature</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Title</p> <p><b>ATTEST:</b></p> <p>By: _____</p> <p>Its: _____</p>
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\* 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.



**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**[attached behind this page]**

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**EXHIBIT A-1**  
**SCOPE OF SERVICES**  
**RIGHT OF WAY APPRAISAL SERVICES**

The Riverside County Transportation Commission (Commission) has selected Consultant (Consultant or Appraiser) as part of an on-call bench of firms engaged to provide right of way appraisal services for developed or undeveloped residential, commercial, industrial, agricultural and railroad properties. Consultant shall produce appraisal reports for full or partial acquisitions, easements, temporary construction easements, leased or licensed properties, and sale or disposition of excess/surplus properties, as required by the Commission. Services shall be provided on an oncall/ as needed basis in support of current and future Commission Projects, Measure A Projects and projects done in partnership with other agencies, pursuant to Task Orders issued in the sole discretion of the Commission.

Task Orders shall be awarded through an additional qualification-based selection process.

Such appraisal services may include, but are not limited to, the following work program and must comply with the requirements below, as applicable:

1. Consultant shall prepare appraisals in accordance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and implemented by 49 CFR Part 24; the State of California Government Code, the State of California Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Code of Regulations Ch 6, Art 1, Section 6000 et seq.), the California Code of Civil Procedure, the Uniform Standards of Professional Appraisal Practice (USPAP), and in some cases, the Uniform Appraisal Standards for Federal Land Acquisition Act. Consultant must be licensed by the State of California.

2. Consultant shall prepare appraisals in accordance with the Uniform Appraisal Standards for Federal Land Acquisition ("Yellow Book"). Consultant must be

licensed by the State of California.

3. Consultant must be qualified to provide expert witness testimony and defend the opinions or conclusions reached in the appraisal at any Administrative or Judicial proceeding.

4. Deliverables shall typically consist of three (3) originals of the completed appraisal report and one (1) electronic copy, specialty reports and component valuations which may be performed by someone other than Consultant and incorporated into the overall fair market valuation.

5. Consultant may be required to meet with and coordinate their efforts with Commission staff, Commission legal counsel, and other consultants or Caltrans staff; participate in office or project site meetings.

6. Appraisal reports may be reviewed for acceptance and approval by Commission's review appraisers and Caltrans. Revisions may be required by reason of this review process. Consultants may be requested to complete and deliver revised and/or updated appraisals. In the event of non-acceptance due to errors or omissions, Consultant shall have fifteen (15) calendar days to make corrections and return the revised appraisals to the review appraiser.

7. For proposed acquisitions, the owner of the real property or a designated representative will be invited by the Appraiser to accompany the Appraiser during the inspection of the property. This invitation must be in the form of a letter entitled "Notice to Appraise" written by the Appraiser to the owner. A copy of the invitation will be included in the appraisal report.

8. It is the Appraiser's responsibility to contact the Commission's project engineers for discussion and/or clarification of the Construction in the Manner Proposed. This is critical in the appraisal of partial acquisitions and easements where the Appraiser may need cross sections or other project engineering information to complete the report.

9. The highest and best use for the property in the before condition must be determined and supported. If a partial acquisition is involved, the highest and best use of the property in the after condition must be determined and

supported. If the existing use is not the premise on which the valuation is based, the appraisal will contain an explanation justifying the determination that the property is available and adaptable for a different highest and best use and there is demand for that use in the market.

10. Where the acquisition involves only a part (or portion) of the property, the Appraiser will estimate any severance damages and special benefits to the remainder, including reasoning and market data to support the opinion or conclusion. The Appraiser will indicate if the remainder constitutes an economic or uneconomic unit in the market and/or to the present owner.

11. The California Eminent Domain Law will be followed in partial acquisitions. Special benefits are to be offset only against damages to the remainder in accordance with the law.

12. Appraisal for easement acquisitions will reflect the restrictive elements of the easement to be acquired and the potential effect of such elements on the utility of the property considering its highest and best use. Full details with respect to any interference with the highest and best use of the property affected must be explained and supported.

13. The Appraiser must estimate and support the economic rent, state the contract rent and the remaining term of the lease as of the date of value. Lessor and lessee responsibilities for paying major expenses, e.g., taxes, insurance and maintenance shall be included.

14. Appraiser shall itemize in detail the "improvements pertaining to realty" (Eminent Domain Law-CCP Section 1263.205) showing their replacement cost new, depreciated value in place, salvage value if any, and relocation estimate. To the extent possible, determine the ownership claims of the Improvements Pertaining to the Realty.

15. In cases where the Appraisal Assignment requires a Specialty Appraisal (Furniture, Fixtures, Machinery and Equipment) and/or Specialists Reports (title, survey, soils, engineering), Appraiser shall utilize the services of Commission's On-Call Consultants for such services or obtain Commission's

prior approval for any others. Fees charged by Commission's On-Call Consultants for Specialty Appraisal and/or Specialists Reports shall be paid directly by the Commission.

16. It is the Appraiser's responsibility to thoroughly review the Specialty Appraisal for adoption (with adjustments or not, as appropriate) and inclusion in the overall appraisal. The estimated values that the specialty items contribute to the overall value of the real estate will be separately stated but included in the total value of the property.

17. If any legal issues exist during the appraisal assignment, Appraiser shall request legal opinion. All legal opinions shall be rendered by Commission's legal counsel.

18. It is the Appraiser's responsibility to contact the Commission's legal counsel, if necessary, for discussion and/or clarification in identifying personal or real property.

19. If hazardous waste is discovered on the property, Appraiser shall seek further direction from the Commission.

**EXHIBIT A-2**  
**SCOPE OF SERVICES**  
**RIGHT OF WAY APPRAISAL REVIEW SERVICES**

The Riverside County Transportation Commission (Commission) has procured one or more Consultants (Consultant/Review Appraiser) to provide Appraisal Review Services on an On-Call/as needed basis in support of current Commission Projects, Measure A Projects, and projects done in partnership with other agencies, pursuant to Task Orders issued in the sole discretion of the Commission.

Task Orders shall be awarded through an additional qualification-based selection process. Such review appraisal services may include, but are not limited to, the following work programs, and/or comply with applicable requirements below:

1. When required by the Commission, Review Appraiser shall examine appraisals prepared by Commission's On-Call Residential, Commercial, Industrial, Railroad, and/or Agricultural appraisers.
2. When required by the Commission, Review Appraiser shall examine appraisals submitted by the property owners and comment by memorandum on the findings.
3. Review Appraiser shall provide Appraisal Review Services based on nationally recognized appraisal standards and techniques, including those established by the Uniform Standards of Professional Appraisal Practice (USPAP), the Uniform Appraisal Standards for Federal Land Acquisition; ensure compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and implemented by 49 CFR Part 24; the State of California Government Code, the State of California Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Code of Regulations CH 6, Art 1, Section 6000 et seq.), and the California Code of Civil Procedure. Comply with the requirements of the Caltrans Right of Way Manual, when applicable. Consultants must be licensed by the State of California.
4. Review Appraiser shall provide Appraisal Review Services to ensure compliance for appraisals prepared in accordance with the Uniform Appraisal Standards for Federal Land Acquisition ("Yellow Book"), Consultant must be licensed by the State of

California.

5. Review Appraiser must be qualified to provide expert witness testimony and defend the conclusions at any Administrative or Judicial proceeding.

6. Review Appraiser may be required to meet with and coordinate their efforts with Commission staff, Commission legal counsel, other consultants, or Caltrans staff; participate in office or project site meetings.

7. It is the Review Appraiser's responsibility to contact Commission's project engineers for discussion and/or clarification of any project design matters. This is critical in reviewing appraisals of partial acquisitions and easements where engineering information must be verified.

8. Review Appraiser shall examine appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

9. Appraisal Review reports may be reviewed for acceptance by Caltrans or other approving agencies.

10. If the Review Appraiser is unable to recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation or market value, and it is determined that it is not practical to obtain additional appraisal, Review Appraiser may develop appraisal documentation to recommend value.

11. The Review Appraiser and the Appraiser should discuss the appraisal assignment as soon work is assigned. The Review Appraiser and, if practical, the Appraiser should hold at least one field review to identify any legal issues that may exist. If any legal issues exist; the Review Appraiser shall request legal opinion.

12. All legal opinions shall be rendered by Commission's legal counsel and the appraisal prepared in accordance therewith.

13. The Review Appraiser's certification of the recommended value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation. Any damages or benefits to any remaining property shall also be identified in the statement.

14. All reports and deliverables shall typically consist of one (1) original and one (1)

electronic copy, including specialty reports which may be prepared by other consultants.

15. In cases where the assignment requires other services, subject to Commission authorization, Review Appraiser shall utilize the services of Commission's On-Call Consultants. Fees charged by Commission's On-Call Consultants shall be paid directly by Commission.

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**EXHIBIT "B"**  
**COMPENSATION AND PAYMENT**

**[attached behind this page]**

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**EXHIBIT "B"**

**COMPENSATION SUMMARY<sup>1</sup>**

<b>FISCAL YEAR</b>	<b>PROJECT</b>	<b>COST</b>
FY 2024/25	Services	\$ 50,000.00
FY 2025/26	Services	307,500.00
FY 2026/27	Services	307,500.00
FY 2027/28	Services	307,500.00
FY 2028/29	Services	307,500.00
	<b>SUBTOTAL</b>	<b>1,280,000.00</b>
	<b>OTHER DIRECT COSTS</b>	<b>5,000.00</b>
	<b>TOTAL COSTS</b>	<b>\$ 1,285,000.00</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.

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**TO BE INSERTED FROM RFP:**

**EXHIBIT “C” CALTRANS/STATE REQUIREMENTS**

**EXHIBIT “D” FHWA/CALTRANS REQUIREMENTS**

**EXHIBIT “F” FTA REQUIREMENTS**

**EXHIBIT “G” – LOBBYING ACTIVITIES DISCLOSURE**

**TO BE INSERTED FROM CONSULTANT PROPOSAL:**

**EXHIBIT “H” – DBE COMMITMENT FORM**

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**EXHIBIT "E"**

**CERTIFICATE OF CONSULTANT AND  
EXECUTIVE ORDER N-6-22 CERTIFICATION**

**[attached behind this page]**

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## CERTIFICATE OF CONSULTANT

I HEREBY CERTIFY that I am the \_\_\_\_\_ and duly authorized representative of the firm of \_\_\_\_\_ whose address is \_\_\_\_\_, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement; nor
- (b) agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the agreement; nor
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this agreement involving participation of Federal-aid Highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

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

Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**EXECUTIVE ORDER N-6-22 CERTIFICATION**

Executive Order N-6-22 issued by Governor Gavin Newsom on March 4, 2022, directs all agencies and departments that are subject to the Governor’s authority to (a) terminate any contracts with any individuals or entities that are determined to be a target of economic sanctions against Russia and Russian entities and individuals; and (b) refrain from entering into any new contracts with such individuals or entities while the aforementioned sanctions are in effect.

Executive Order N-6-22 also requires that any contractor that: (1) currently has a contract with the Riverside County Transportation Commission (“Commission”) funded through grant funds provided by the State of California; and/or (2) submits a bid or proposal or otherwise proposes to or enter into or renew a contract with the Commission with State of California grant funds, certify that the person is not the target of any economic sanctions against Russia and Russian entities and individuals.

The contractor hereby certifies, SUBJECT TO PENALTY FOR PERJURY, that a) the contractor is not a target of any economic sanctions against Russian and Russian entities and individuals as discussed in Executive Order N-6-22 and b) the person signing below is duly authorized to legally bind the Contractor. This certification is made under the laws of the State of California.

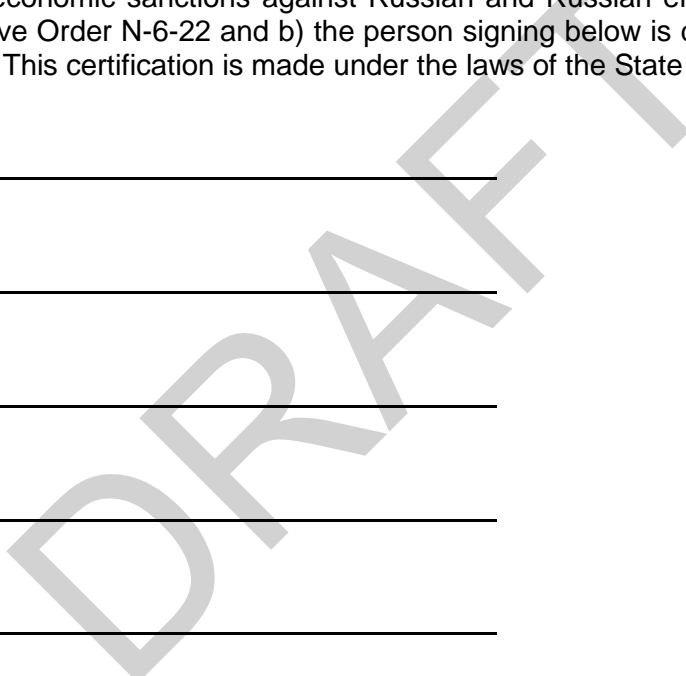
Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Date: \_\_\_\_\_



**Agreement No. 25-31-049-00**

**PROFESSIONAL SERVICES AGREEMENT  
WITH FHWA AND STATE FUNDING ASSISTANCE**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
RIGGS & RIGGS, INC.  
FOR ON-CALL  
RIGHT OF WAY APPRAISAL AND  
APPRAISAL REVIEW SERVICES**

**Parties and Date.**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2025, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and RIGGS & RIGGS. ("Consultant"), a CORPORATION. The Commission and Consultant are sometimes referred to herein individually as "Party", and collectively as the "Parties".

**Recitals.**

A. 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").

B. 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.

C. 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.

D. The Western Riverside County Regional Conservation Authority ("RCA") is a Joint Powers Authority ("JPA") comprised of the County and eighteen cities in the western portion of the County.

E. Pursuant to an Implementation and Management Services Agreement between the Commission and RCA, the Commission provides management services on behalf of RCA, and may contract with consultants to provide services for RCA.

F. The sources of funding for payment for on-call professional consulting services provided under this Agreement may include the following funding sources:

Measure A, State Transportation Improvement Program,  
Federal Highway Administration (FHWA), Federal Transit

Administration (FTA), Transportation Uniform Mitigation Fees, or RCA reimbursements.

This Agreement shall not be deemed to be approved by the Commission until the certifications shown in Exhibit "E" attached hereto and incorporated herein by reference, is executed. Consultant shall comply with all funding source requirements as further set forth in this Agreement and the attached exhibits.

G. Consultant desires to perform and assume responsibility for the provision of certain on-call right of way appraisal and appraisal review services for projects in the County of Riverside, California. Services shall be provided for the Commission or for the benefit of RCA, as directed, on the terms and conditions set forth in this Agreement and in the task order(s) to be solicited, awarded and authorized by Commission as further described in this Agreement ("Task Order"). Consultant represents that it is experienced in providing such services to public clients, is licensed in the State of California (if necessary), and is familiar with the plans of the Commission.

H. Commission desires to engage Consultant to render such services on an on-call basis. Services shall be ordered by Task Order(s) to be issued pursuant to this Agreement for future projects as set forth herein and in each Task Order (each such project shall be designated a "Project" under this Agreement).

## **Terms.**

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 on-call right of way appraisal and appraisal review services for the Projects ("Services"). The Services are generally described in Exhibit "A" attached hereto and incorporated herein by reference. The Services shall be more particularly described in the individual Task Orders issued by the Commission's Executive Director or designee. No Services shall be performed unless authorized by a Task Order. All Services shall be subject to, and performed in accordance with, this Agreement, the relevant Task Order, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

2. Task Orders; Commencement of Services; Schedule of Services. Services under this Agreement shall be requested by the Commission pursuant to Task Order requests. If Commission accepts Consultant's Task Order proposal, Commission shall issue a purchase order or executed task order for the Services ("Commission's Task Order Authorization"). Consultant's agreement to the final terms of a proposed Task Order, Commission's Task Order Authorization and Consultant's commencement of the Services shall indicate the Parties' agreement to the terms of the relevant Task Order.

Consultant shall commence Services under a Task Order within five (5) days of receiving Commission's Task Order Authorization.



Consultant shall perform the Services expeditiously, in accordance with any schedule for the Services set forth in a Task Order (“Schedule of Services”). Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, Commission shall respond to Consultant's submittals in a timely manner. Upon request of the Commission, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

Task Orders may not be used to amend the language (or the terms) of this Agreement nor to exceed the scope of work under this Agreement.

3. Pre-Award Audit. As a result of the funding for this Project, and to the extent Caltrans procedures apply in connection therewith, issuance of a “Notice to Proceed” or other authorization to proceed under a Task Order may be contingent upon completion and approval of a pre-award audit. Any questions raised during the pre-award audit shall be resolved before Services are commenced under a Task Order. The funding provided under this Agreement is contingent on meeting all funding requirements and could be withdrawn, thereby entitling the Commission to terminate this Agreement, if the procedures are not completed. The Consultant's files shall be maintained in a manner to facilitate State process reviews. In addition, Caltrans may require that prior to performance of any work for which funding reimbursement through Caltrans is requested and provided, that Caltrans must give to Commission an “Authorization to Proceed”.

4. Audit Procedures.

4.1 Consultant and certain subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an Independent Cost Review (ICR) Audit, or a CPA ICR audit work paper review. If selected for audit or review, this Agreement, Consultant's cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. This Agreement, Consultant's cost proposal, and ICR shall be adjusted by Consultant and approved by the Commission's contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into this Agreement by this reference if directed by Commission at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of the Agreement terms and cause for termination of this Agreement and disallowance of prior reimbursed costs. Additional audit provisions applicable to this Agreement are set forth in Sections 22 and 23 of this Agreement.

Section 4.2 and 4.3 shall apply to the extent applicable to the Task Order and funding source.

4.2 During any Caltrans' review of the ICR audit work papers created by the Consultant's independent CPA (which may include review by the Independent Office of Audits and Investigations), Caltrans will work with the CPA and/or Consultant toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans identifies significant issues during the review and is unable to issue a cognizant approval letter, Commission will reimburse the Consultant at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines is received and approved by Caltrans.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
- b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
- c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.

4.3 If Caltrans is unable to issue a cognizant letter per Section 4.2 above, Caltrans may require Consultant to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the Caltrans' management letter. Caltrans will then have up to six (6) months to review the Consultant's and/or the independent CPA's revisions.

If the Consultant fails to comply with the provisions of this Section 4, or if Caltrans is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in Section 4.2 above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this Agreement.

Consultant may submit to Commission final invoice only when all of the following items have occurred: (1) Caltrans accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this Agreement has been completed to the satisfaction of Commission; and, (3) Caltrans has issued its final ICR review letter. The Consultant must submit its final invoice to Commission no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this Agreement and all Task Orders issued under this Agreement, and all other agreements executed between the Commission and the Consultant, either as a prime or subconsultant, with the same fiscal period ICR.

5. Term.

5.1 This Agreement shall go into effect on the date first set forth above, contingent upon approval by Commission, and shall remain in effect for three (3) years, unless extended by contract amendment. The Commission may extend the term of this Agreement, in its sole discretion, for two (2) additional one (1) year period(s). The maximum term of this Agreement, including all option terms, shall not exceed five (5) years. No Task Order shall extend beyond the expiration date of this Agreement.

5.2 Consultant is advised that any recommendation for contract award is not binding on Commission until this Agreement is fully executed and approved by the Commission.

5.3 This Agreement shall remain in effect until the date set forth above, 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.

6. Commission's Contract Administrator. The Commission hereby designates the Commission's Executive Director, or his or her designee, to act as its Contract Administrator for the performance of this Agreement ("Commission's Contract Administrator"). Commission's Contract Administrator shall have the authority to act on behalf of the Commission for all purposes under this Agreement. Commission's Contract Administrator 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 Contract Administrator or his or her designee.

7. Consultant's Representative. Consultant hereby designates **Joyce L. Riggs, Vice President** 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 or her 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 Contract Administrator 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 Contract Administrator.

8. 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 herein. The key personnel for performance of this Agreement are: **Bryan G. Riggs, President and Joyce L. Riggs, Vice President**, or as otherwise identified in the Task Order.

9. Standard of Care; License. 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 and RCA 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.

10. 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. Consultant hereby indemnifies and holds the Commission and RCA harmless, pursuant to the indemnification provisions contained in this Agreement, from any and all claims that may be made against the Commission based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

## 11. Project Progress.

11.1 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 Contract Administrator.

11.2 Trend Meetings. Consultant shall conduct trend meetings with the Commission's Contract Administrator 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.

11.3 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.

## 12. Delay in Performance.

12.1 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, pandemics, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather, performance of such act shall be excused for the period of such delay.

12.2 Written Notice. If Consultant believes it is entitled to an extension of time due to conditions set forth in subsection 12.1, 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.

12.3 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.

13. 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 Contract Administrator 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 Federal funding. In the event that Commission's Contract Administrator, in his or her sole discretion, determines the formally submitted work product to be not in accordance with the standard of care established under this Agreement, Commission's Contract Administrator may require Consultant to revise and resubmit the work at no cost to the Commission.

14. 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.

15. Opportunity to Cure; Inspection of Work. 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. Consultant shall allow the Commission's Contract Administrator and Caltrans to inspect or review Consultant's work in progress at any reasonable time.

16. Final Acceptance. Upon determination by the Commission that Consultant has satisfactorily completed the Services required under this Agreement and within the term set forth herein 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.

17. 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 the United States Department of Transportation. For example, and not by way of limitation, a signed Categorical Exclusion, Finding of No Significant Impact, or published Record of Decision may be required to be approved and/or completed by the United States Department of Transportation. For Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such 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, RCA and their 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.

## 18. Fees and Payment.

18.1 The method of payment for this Agreement will be based specific rates of compensation. Consultant will be reimbursed for hours worked at the hourly rates specified in the Consultant's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

18.2 In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order.

18.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's approved Cost Proposal.

18.4 Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. Consultant will be responsible for transportation and subsistence costs in excess of State rates.

18.5 When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

18.6 Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred. No payment will be made prior to approval or for any work performed prior to approval of this Agreement, or prior to issuance of a Task Order.

18.7 Consultant will be reimbursed within thirty (30) days upon approval by Commission's Contract Administrator of itemized invoices submitted by Consultant. Separate invoices itemizing all costs are required for all work performed under each Task

Order. Commission's Contract Administrator shall notify Consultant of any disputed items contained in an invoice, and payment for such items shall be withheld pending resolution of the Commission's concerns.

18.8 Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number.

Invoices shall be mailed to Commission's Contract Administrator at the following address:

Riverside County Transportation Commission  
Attention: Accounts Payable  
P.O. 12008  
Riverside, CA 92502

18.9 The total amount payable by Commission for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment. If Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

18.10 Commission has or will enter into six (6) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("On-Call Right of Way Contracts"). The other On-Call Right of Way Contracts are **Bender Rosenthal, Inc., 25-31-008-00; CBRE, Inc., 25-31-046-00; Hawran & Malm LLC, 25-31-047-00; R.P. Laurain & Associates., 23-31-048-00, and Thompson and Thompson Real Estate Valuation and Consulting, Inc., 25-31-050-00**. The total amount payable by Commission for the On-Call Right of Way Contracts shall not exceed a cumulative maximum total value of Seven Hundred Seventy-One Thousand Dollars (\$771,000) ("NTE Sum"). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the On-Call Right of Way Contracts through Task Orders. Each time a Task Order is awarded under any of the On-Call Right of Way Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the On-Call Right of Way Contracts. The notice must identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Commission must not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant must not enter into a Task Order that exceeds the NTE Sum.

18.11 All subcontracts in excess of \$25,000 shall contain the above provisions.



19. Disputes.

19.1 Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by mutual agreement of the Parties shall be decided by a committee consisting of RCTC's Contract Administrator and the Director of Capital Projects, who may consider written or verbal information submitted by Consultant.

19.2 Not later than 30 days after completion of all Services under this Agreement, Consultant may request review by the Commission's Executive Director of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

19.3 Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this Agreement.

20. Termination; Suspension.

20.1 Commission reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant, for any or no reason, with the reasons for termination stated in the notice. Commission may terminate Services under a Task Order, at any time, for any or no reason, with the effective date of termination to be specified in the notice of termination of Task Order.

20.2 Commission may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, Commission may proceed with the Services in any manner deemed proper by Commission. If Commission terminates this Agreement with Consultant, Commission shall pay Consultant the sum due to Consultant under this Agreement for Services completed and accepted prior to termination, unless the cost of completion to Commission exceeds the funds remaining in the Agreement. In such case, the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

20.3 In addition to the above, payment upon termination 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 Contract Administrator 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

20.4 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.

20.5 In addition to the above, 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 this Agreement. Termination of this Agreement for cause may be considered by the Commission in determining whether to enter into future agreements with Consultant.

20.6 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.

20.7 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.

20.8 Consultant may not terminate this Agreement except for cause.

21.9 In addition to the termination rights above, Commission may temporarily suspend this Agreement or Services under any Task Order, at no additional cost to Commission, provided that Consultant is given written notice of temporary suspension. If Commission gives such notice of temporary suspension, Consultant shall immediately suspend its activities under the relevant Task Order(s). A temporary suspension may be issued concurrent with a notice of termination.

## 21. Cost Principles and Administrative Requirements.

21.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

21.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

21.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to Commission.

21.4 All subcontracts in excess of \$25,000 shall contain the above provisions.

22. Retention of Records/Audit. For the purpose of determining compliance with, as applicable, 2 CFR Part 200, Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and

other matters connected with the performance of this Agreement pursuant to Government Code 8546.7; Consultant, subconsultants, and Commission shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering this Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under this Agreement. The State, State Auditor, Commission, or any duly authorized representative of the State or Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to this Agreement and, if applicable, indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

22.1 Accounting System. Consultant 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 Consultant 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.

23. Audit Review Procedures.

23.1 Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by Commission's Chief Financial Officer.

23.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by Commission's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

23.3 Neither the pendency of a dispute nor its consideration by Commission shall excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.

24. Subcontracting.

24.1 Nothing contained in this Agreement or otherwise, shall create any contractual relation between Commission and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to Commission and RCA for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from Commission's obligation to make payments to the Consultant.

24.2 Consultant shall perform the Services contemplated with resources available within its own organization and no portion of the Services pertinent to this Agreement shall be subcontracted without written authorization by Commission's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

24.3 Consultant shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to Consultant by Commission.

24.4 Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.

24.5 Any substitution of subconsultant(s) must be approved in writing by Commission's Contract Administrator prior to the start of work by the subconsultant(s).

24.6 Exhibit "B" may set forth the rates at which each subconsultant shall bill the Consultant for Services and that are subject to reimbursement by the Commission to Consultant. Additional Direct Costs, as defined in Exhibit "B" shall be the same for both the Consultant and all subconsultants, unless otherwise identified in Exhibit "B" or in a Task Order. The subconsultant rate schedules and cost proposals contained herein are for accounting purposes only.

## 25. Equipment Purchase

25.1 Prior authorization, in writing, by Commission's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract for supplies, equipment, or services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

25.2 For purchase of any item, service or consulting work not covered in the Cost Proposal and exceeding \$5,000 prior authorization, in writing, by Commission's Contract Administrator is required. Three competitive quotations must be submitted with the request for such purchase, or the absence of bidding must be adequately justified.

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

terms and conditions of such sale must be approved in advance by Commission. 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the Project.

25.4 All subcontracts in excess \$25,000 shall contain the above provisions.

26. Labor Code Requirements.

26.1 Prevailing Wages.

(a) If applicable, Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the Services.

(b) When prevailing wages apply to the Services described in the Scope of Services, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

(c) Copies of the prevailing rate of per diem wages in effect at commencement of this Agreement 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, RCA and their 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.

26.2 DIR Registration. If the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

26.3 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 Consultant or the Services are not subject to the Eight-Hour Law. Consultant shall forfeit to Commission 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 Consultant or the Services are not subject to the Eight-Hour Law.

26.4 Employment of Apprentices. This Agreement shall not prevent the employment of properly indentured apprentices in accordance with the California Labor Code, and no employer or labor union shall refuse to accept otherwise qualified employees as indentured apprentices on the work performed hereunder solely on the ground of race, creed, national origin, ancestry, color or sex. Every qualified apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which he or she is employed and shall be employed only in the craft or trade to which he or she is registered.

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

The parties expressly understand that the responsibility for compliance with provisions of this Section and with Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code in regard to all apprenticeable occupations lies with Consultant

27. Ownership of Materials/Confidentiality.

27.1 Documents & Data. This Agreement creates an exclusive and perpetual license for Commission and RCA 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 and RCA are 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 or RCA.

Commission and RCA 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 and RCA's sole risk.

27.2 Intellectual Property. In addition, Commission and RCA 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 and RCA 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.

27.3 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 or RCA'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.

27.4 Infringement Indemnification. Consultant shall defend, indemnify and hold the Commission, RCA, their directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by Commission or RCA of the Documents & Data, including any method, process, product, or concept specified or depicted.

28. Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold Commission, RCA, Caltrans and their 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, inverse condemnation, and any claims related to property acquisition and relocation rules or failure to detect or abate hazardous materials, which are brought by a third party, and which , in any manner arise out of or are 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, RCA, Caltrans, and their directors, officials, officers, employees, consultants, agents, or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Commission, RCA, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission, RCA, Caltrans and their 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, RCA, Caltrans or their directors, officials officers, employees, consultants, agents, or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful



misconduct of the Consultant and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

## 29. Insurance.

29.1 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 a form and with insurance companies acceptable to the Commission. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this Section.

29.2 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 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. Consultant shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit. Limits may be achieved by any combination of primary and excess or umbrella liability insurance; (2) *Automobile Liability*: \$2,000,000 per accident for bodily injury and property damage. Limits may be achieved by any combination of primary and excess or umbrella liability insurance; and (3) *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.

29.3 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. For Consultant, such insurance shall be in an amount not less than \$2,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically

designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. Subconsultants of Consultant shall obtain such insurance in an amount not less than \$1,000,000 per claim. Notwithstanding the foregoing, the Commission may consider written requests to lower or dispense with the errors and omissions liability insurance requirement contained in this Section for certain subconsultants of Consultant, on a case-by-case basis, depending on the nature and scope of the Services to be provided by the subconsultant. Approval of such request shall be in writing, signed by the Commission's Contract Administrator.

29.4 Aircraft Liability Insurance. Prior to conducting any Services requiring use of aircraft, Consultant shall procure and maintain, or cause to be procured and maintained, aircraft liability insurance or equivalent form, with a single limit as shall be required by the Commission. Such insurance shall include coverage for owned, hired and non-owned aircraft and passengers, and shall name, or be endorsed to name, the Commission, Caltrans and their directors, officials, officers, employees and agents as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant.

29.5 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) 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 the Commission, RCA, 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 the Commission's,

RCA's 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) the Commission, RCA, 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 Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Commission, RCA, Caltrans and their 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, RCA, Caltrans and their 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.

(c) Workers' Compensation and Employers Liability Coverage.

(i) Consultant 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 the Commission, RCA, Caltrans and their 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.

(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 the Commission, RCA, Caltrans and their 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 the Commission. 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) Consultant shall provide the Commission at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant 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 Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the Commission 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. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant 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 Consultant, and any approval of said insurance by the Commission, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant 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, Commission has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Commission will be promptly reimbursed by Consultant or Commission will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Commission may cancel this Agreement. The Commission may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(viii) Neither the Commission, RCA 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.

29.6 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, RCA, their 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 expense.

29.7 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.

29.8 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.

29.9 Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the Commission that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the Commission as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, the Commission may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

29.10 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.

30. 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.

31. 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, other than a Cardinal Change. For purposes of this Agreement, a Cardinal Change is a change which is "outside the scope" of the Agreement; in other words, work which should not be regarded as having been fairly and reasonably within the contemplation of the parties when the Agreement was entered into. An example of a change which is not a Cardinal Change would be where, in a contract to construct a building there are many changes in the materials used, but the size and layout of the building remains the same. Cardinal Changes are not within the authority of this provision to order, and shall be processed by the Commission as "sole source" procurements according to applicable law, including the requirements of FTA Circular 4220.1D, paragraph 9(f).

(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.

### 32. Prohibited Interests.

32.1 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.

### 32.2 Consultant Conflict of Interest.

(a) Consultant shall disclose any financial, business, or other relationship with Commission that may have an impact upon the outcome of this Agreement. Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

(b) Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

32.3 Commission 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.

32.4 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.

32.5 Covenant Against Contingent Fees. As required in connection with federal funding, the Consultant 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 the terms herein, 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.

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

32.7 Covenant Against Expenditure of Commission, State or Federal Funds for Lobbying. The Consultant certifies that to the best of his/ her knowledge and belief no state, federal or local agency appropriated funds have been paid, or will be paid by or on behalf of the Consultant to any person for the purpose of influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the award of any state or federal contract, grant, loan, or cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

(a) If any funds other than federal appropriated funds have been paid, or will be paid to any person for the purpose of influencing or attempting to influence

an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this Agreement, the Consultant shall complete and submit the attached Exhibit "F", Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with the attached instructions.

(b) The Consultant's certification provided in this Section is a material representation of fact upon which reliance was placed when this Agreement was entered into, and is a prerequisite for entering into this Agreement pursuant to Section 1352, Title 31, US. Code. Failure to comply with the restrictions on expenditures, or the disclosure and certification requirements set forth in Section 1352, Title 31, US. Code may result in a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) The Consultant also agrees by signing this Agreement that he/she shall require that the language set forth in this Section be included in all Consultant subcontracts which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

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

33. 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.

34. Right to Employ Other Consultants. Commission and RCA reserve the right to employ other consultants in connection with the Project.

35. Governing Law. This Agreement shall be governed by and construed with the laws of the State of California. Venue shall be in Riverside County.

36. Disputes; Attorneys' Fees.

36.1 Prior to commencing any action hereunder, the Parties shall attempt in good faith to resolve any dispute arising between them. The pendency of a dispute shall not excuse Consultant from full and timely performance of the Services.

36.2. If the Parties are unable to resolve a dispute after attempting in good faith to do so, the Parties may seek any other available remedy to resolve the dispute. 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.

37. Time of Essence. Time is of the essence for each and every provision of this Agreement.

38. 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.

39. 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:**

Riggs & Riggs, Inc.  
4195 Valley Fair Street  
Ste. 207  
Simi Valley, CA 93063  
Attn: Joyce L. Riggs

**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.

40. 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. Notwithstanding the foregoing, if any provision of this Agreement conflicts in any way with a state or federal requirement, as directed by the Commission (i) the state or federal requirement shall govern; or (ii) the more stringent requirement shall apply.

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

42. 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.

43. 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.

44. Provisions Applicable When State Funds or Federal Funds Are Involved. When funding for the Services under a Task Order is provided, in whole or in part, from Caltrans or other State funding source, Consultant shall also fully and adequately comply with the provisions included in Exhibit "C" (California Department of Transportation requirements) attached hereto and incorporated herein by reference. When funding for the Services under a Task Order is provided, in whole or in part, from the FHWA, Consultant shall also fully and adequately comply with the provisions included in Exhibit "D" (FHWA Requirements) attached hereto and incorporated herein by reference. When funding for the Services under a Task Order is provided, in whole or in part, from the FTA, Consultant shall also fully and adequately comply with the provisions included in Exhibit "F" (FTA Requirements) attached hereto and incorporated herein by reference.

45. 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, shall survive any such expiration or termination.

46. No Third Party Beneficiaries. RCA and Caltrans are intended third party beneficiaries of any right or benefit granted to RCA or Caltrans, respectively, under this Agreement. Except as set forth in the foregoing sentence, there are no other intended third party beneficiaries of any right or obligation assumed by the Parties.

47. Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

48. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

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

50. 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.

51. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties, and shall not be assigned by Consultant without the prior written consent of Commission.

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

53. 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.

55. Electronically Transmitted Signatures; Electronic Signatures. 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 this Agreement for all purposes. This Agreement may be signed using an electronic signature.

**[Signatures on following page]**

DRAFT

**SIGNATURE PAGE  
TO  
PROFESSIONAL SERVICES AGREEMENT  
WITH STATE AND FHWA FUNDING/ASSISTANCE**

**ON CALL RIGHT OF WAY APPRAISAL AND APPRAISAL REVIEW SERVICES**

**IN WITNESS WHEREOF**, this Agreement was executed on the date first written above.

<p><b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b></p> <p>By: _____  <b>[INSERT NAME]</b>                  Chair</p> <p><i>Approved as to Form:</i></p> <p>By: _____                  Best, Best &amp; Krieger LLP                  General Counsel</p>	<p><b>CONSULTANT RIGGS &amp; RIGGS, INC.</b></p> <p>By: _____                  Signature</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Title</p> <p><b>ATTEST:</b></p> <p>By: _____</p> <p>Its: _____</p>
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\* 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.

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**[attached behind this page]**

DRAFT

**EXHIBIT A-1**  
**SCOPE OF SERVICES**  
**RIGHT OF WAY APPRAISAL SERVICES**

The Riverside County Transportation Commission (Commission) has selected Consultant (Consultant or Appraiser) as part of an on-call bench of firms engaged to provide right of way appraisal services for developed or undeveloped residential, commercial, industrial, agricultural and railroad properties. Consultant shall produce appraisal reports for full or partial acquisitions, easements, temporary construction easements, leased or licensed properties, and sale or disposition of excess/surplus properties, as required by the Commission. Services shall be provided on an oncall/ as needed basis in support of current and future Commission Projects, Measure A Projects and projects done in partnership with other agencies, pursuant to Task Orders issued in the sole discretion of the Commission.

Task Orders shall be awarded through an additional qualification-based selection process.

Such appraisal services may include, but are not limited to, the following work program and must comply with the requirements below, as applicable:

1. Consultant shall prepare appraisals in accordance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and implemented by 49 CFR Part 24; the State of California Government Code, the State of California Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Code of Regulations Ch 6, Art 1, Section 6000 et seq.), the California Code of Civil Procedure, the Uniform Standards of Professional Appraisal Practice (USPAP), and in some cases, the Uniform Appraisal Standards for Federal Land Acquisition Act. Consultant must be licensed by the State of California.
2. Consultant shall prepare appraisals in accordance with the Uniform Appraisal Standards for Federal Land Acquisition ("Yellow Book"). Consultant must be

licensed by the State of California.

3. Consultant must be qualified to provide expert witness testimony and defend the opinions or conclusions reached in the appraisal at any Administrative or Judicial proceeding.

4. Deliverables shall typically consist of three (3) originals of the completed appraisal report and one (1) electronic copy, specialty reports and component valuations which may be performed by someone other than Consultant and incorporated into the overall fair market valuation.

5. Consultant may be required to meet with and coordinate their efforts with Commission staff, Commission legal counsel, and other consultants or Caltrans staff; participate in office or project site meetings.

6. Appraisal reports may be reviewed for acceptance and approval by Commission's review appraisers and Caltrans. Revisions may be required by reason of this review process. Consultants may be requested to complete and deliver revised and/or updated appraisals. In the event of non-acceptance due to errors or omissions, Consultant shall have fifteen (15) calendar days to make corrections and return the revised appraisals to the review appraiser.

7. For proposed acquisitions, the owner of the real property or a designated representative will be invited by the Appraiser to accompany the Appraiser during the inspection of the property. This invitation must be in the form of a letter entitled "Notice to Appraise" written by the Appraiser to the owner. A copy of the invitation will be included in the appraisal report.

8. It is the Appraiser's responsibility to contact the Commission's project engineers for discussion and/or clarification of the Construction in the Manner Proposed. This is critical in the appraisal of partial acquisitions and easements where the Appraiser may need cross sections or other project engineering information to complete the report.

9. The highest and best use for the property in the before condition must be determined and supported. If a partial acquisition is involved, the highest and best use of the property in the after condition must be determined and

supported. If the existing use is not the premise on which the valuation is based, the appraisal will contain an explanation justifying the determination that the property is available and adaptable for a different highest and best use and there is demand for that use in the market.

10. Where the acquisition involves only a part (or portion) of the property, the Appraiser will estimate any severance damages and special benefits to the remainder, including reasoning and market data to support the opinion or conclusion. The Appraiser will indicate if the remainder constitutes an economic or uneconomic unit in the market and/or to the present owner.

11. The California Eminent Domain Law will be followed in partial acquisitions. Special benefits are to be offset only against damages to the remainder in accordance with the law.

12. Appraisal for easement acquisitions will reflect the restrictive elements of the easement to be acquired and the potential effect of such elements on the utility of the property considering its highest and best use. Full details with respect to any interference with the highest and best use of the property affected must be explained and supported.

13. The Appraiser must estimate and support the economic rent, state the contract rent and the remaining term of the lease as of the date of value. Lessor and lessee responsibilities for paying major expenses, e.g., taxes, insurance and maintenance shall be included.

14. Appraiser shall itemize in detail the "improvements pertaining to realty" (Eminent Domain Law-CCP Section 1263.205) showing their replacement cost new, depreciated value in place, salvage value if any, and relocation estimate. To the extent possible, determine the ownership claims of the Improvements Pertaining to the Realty.

15. In cases where the Appraisal Assignment requires a Specialty Appraisal (Furniture, Fixtures, Machinery and Equipment) and/or Specialists Reports (title, survey, soils, engineering), Appraiser shall utilize the services of Commission's On-Call Consultants for such services or obtain Commission's



prior approval for any others. Fees charged by Commission's On-Call Consultants for Specialty Appraisal and/or Specialists Reports shall be paid directly by the Commission.

16. It is the Appraiser's responsibility to thoroughly review the Specialty Appraisal for adoption (with adjustments or not, as appropriate) and inclusion in the overall appraisal. The estimated values that the specialty items contribute to the overall value of the real estate will be separately stated but included in the total value of the property.

17. If any legal issues exist during the appraisal assignment, Appraiser shall request legal opinion. All legal opinions shall be rendered by Commission's legal counsel.

18. It is the Appraiser's responsibility to contact the Commission's legal counsel, if necessary, for discussion and/or clarification in identifying personal or real property.

19. If hazardous waste is discovered on the property, Appraiser shall seek further direction from the Commission.

**EXHIBIT A-2**  
**SCOPE OF SERVICES**  
**RIGHT OF WAY APPRAISAL REVIEW SERVICES**

The Riverside County Transportation Commission (Commission) has procured one or more Consultants (Consultant/Review Appraiser) to provide Appraisal Review Services on an On-Call/as needed basis in support of current Commission Projects, Measure A Projects, and projects done in partnership with other agencies, pursuant to Task Orders issued in the sole discretion of the Commission.

Task Orders shall be awarded through an additional qualification-based selection process. Such review appraisal services may include, but are not limited to, the following work programs, and/or comply with applicable requirements below:

1. When required by the Commission, Review Appraiser shall examine appraisals prepared by Commission's On-Call Residential, Commercial, Industrial, Railroad, and/or Agricultural appraisers.
2. When required by the Commission, Review Appraiser shall examine appraisals submitted by the property owners and comment by memorandum on the findings.
3. Review Appraiser shall provide Appraisal Review Services based on nationally recognized appraisal standards and techniques, including those established by the Uniform Standards of Professional Appraisal Practice (USPAP), the Uniform Appraisal Standards for Federal Land Acquisition; ensure compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and implemented by 49 CFR Part 24; the State of California Government Code, the State of California Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Code of Regulations CH 6, Art 1, Section 6000 et seq.), and the California Code of Civil Procedure. Comply with the requirements of the Caltrans Right of Way Manual, when applicable. Consultants must be licensed by the State of California.
4. Review Appraiser shall provide Appraisal Review Services to ensure compliance for appraisals prepared in accordance with the Uniform Appraisal Standards for Federal Land Acquisition ("Yellow Book"), Consultant must be licensed by the State of

California.

5. Review Appraiser must be qualified to provide expert witness testimony and defend the conclusions at any Administrative or Judicial proceeding.

6. Review Appraiser may be required to meet with and coordinate their efforts with Commission staff, Commission legal counsel, other consultants, or Caltrans staff; participate in office or project site meetings.

7. It is the Review Appraiser's responsibility to contact Commission's project engineers for discussion and/or clarification of any project design matters. This is critical in reviewing appraisals of partial acquisitions and easements where engineering information must be verified.

8. Review Appraiser shall examine appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

9. Appraisal Review reports may be reviewed for acceptance by Caltrans or other approving agencies.

10. If the Review Appraiser is unable to recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation or market value, and it is determined that it is not practical to obtain additional appraisal, Review Appraiser may develop appraisal documentation to recommend value.

11. The Review Appraiser and the Appraiser should discuss the appraisal assignment as soon work is assigned. The Review Appraiser and, if practical, the Appraiser should hold at least one field review to identify any legal issues that may exist. If any legal issues exist; the Review Appraiser shall request legal opinion.

12. All legal opinions shall be rendered by Commission's legal counsel and the appraisal prepared in accordance therewith.

13. The Review Appraiser's certification of the recommended value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation. Any damages or benefits to any remaining property shall also be identified in the statement.

14. All reports and deliverables shall typically consist of one (1) original and one (1)

electronic copy, including specialty reports which may be prepared by other consultants.

15. In cases where the assignment requires other services, subject to Commission authorization, Review Appraiser shall utilize the services of Commission's On-Call Consultants. Fees charged by Commission's On-Call Consultants shall be paid directly by Commission.

DRAFT

**EXHIBIT "B"**  
**COMPENSATION AND PAYMENT**

**[attached behind this page]**

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**EXHIBIT "B"**

**COMPENSATION SUMMARY<sup>1</sup>**

<b>FISCAL YEAR</b>	<b>PROJECT</b>	<b>COST</b>
FY 2024/25	Services	\$ 50,000.00
FY 2025/26	Services	307,500.00
FY 2026/27	Services	307,500.00
FY 2027/28	Services	307,500.00
FY 2028/29	Services	307,500.00
	<b>SUBTOTAL</b>	<b>1,280,000.00</b>
	<b>OTHER DIRECT COSTS</b>	<b>5,000.00</b>
	<b>TOTAL COSTS</b>	<b>\$ 1,285,000.00</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.

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**TO BE INSERTED FROM RFP:**

**EXHIBIT “C” CALTRANS/STATE REQUIREMENTS**

**EXHIBIT “D” FHWA/CALTRANS REQUIREMENTS**

**EXHIBIT “F” FTA REQUIREMENTS**

**EXHIBIT “G” – LOBBYING ACTIVITIES DISCLOSURE**

**TO BE INSERTED FROM CONSULTANT PROPOSAL:**

**EXHIBIT “H” – DBE COMMITMENT FORM**

DRAFT

**EXHIBIT "E"**

**CERTIFICATE OF CONSULTANT AND  
EXECUTIVE ORDER N-6-22 CERTIFICATION**

**[attached behind this page]**

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## CERTIFICATE OF CONSULTANT

I HEREBY CERTIFY that I am the \_\_\_\_\_ and duly authorized representative of the firm of \_\_\_\_\_ whose address is \_\_\_\_\_, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement; nor
- (b) agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the agreement; nor
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this agreement involving participation of Federal-aid Highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

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

Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**EXECUTIVE ORDER N-6-22 CERTIFICATION**

Executive Order N-6-22 issued by Governor Gavin Newsom on March 4, 2022, directs all agencies and departments that are subject to the Governor’s authority to (a) terminate any contracts with any individuals or entities that are determined to be a target of economic sanctions against Russia and Russian entities and individuals; and (b) refrain from entering into any new contracts with such individuals or entities while the aforementioned sanctions are in effect.

Executive Order N-6-22 also requires that any contractor that: (1) currently has a contract with the Riverside County Transportation Commission (“Commission”) funded through grant funds provided by the State of California; and/or (2) submits a bid or proposal or otherwise proposes to or enter into or renew a contract with the Commission with State of California grant funds, certify that the person is not the target of any economic sanctions against Russia and Russian entities and individuals.

The contractor hereby certifies, SUBJECT TO PENALTY FOR PERJURY, that a) the contractor is not a target of any economic sanctions against Russian and Russian entities and individuals as discussed in Executive Order N-6-22 and b) the person signing below is duly authorized to legally bind the Contractor. This certification is made under the laws of the State of California.

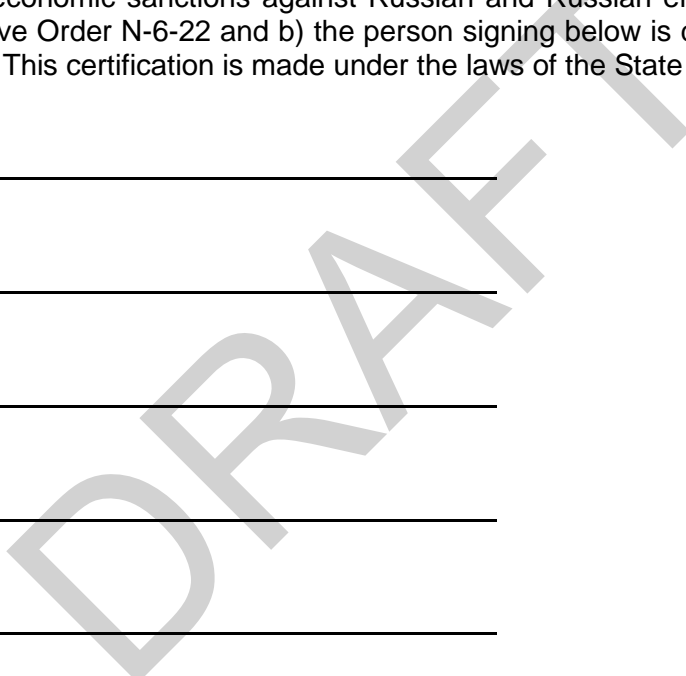
Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Date: \_\_\_\_\_



Agreement No. 25-31-050-00

**PROFESSIONAL SERVICES AGREEMENT  
WITH FHWA AND STATE FUNDING ASSISTANCE**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
THOMPSON & THOMPSON REAL ESTATE VALUATION AND CONSULTING, INC.  
FOR ON-CALL  
RIGHT OF WAY APPRAISAL AND  
APPRAISAL REVIEW SERVICES**

**Parties and Date.**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2025, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and THOMPSON & THOMPSON REAL ESTATE VALUATION AND CONSULTING, INC. ("Consultant"), a CORPORATION. The Commission and Consultant are sometimes referred to herein individually as "Party", and collectively as the "Parties".

**Recitals.**

A. 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").

B. 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.

C. 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.

D. The Western Riverside County Regional Conservation Authority ("RCA") is a Joint Powers Authority ("JPA") comprised of the County and eighteen cities in the western portion of the County.

E. Pursuant to an Implementation and Management Services Agreement between the Commission and RCA, the Commission provides management services on behalf of RCA, and may contract with consultants to provide services for RCA.

F. The sources of funding for payment for on-call professional consulting services provided under this Agreement may include the following funding sources:

Measure A, State Transportation Improvement Program, Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Transportation Uniform Mitigation Fees, or RCA reimbursements.

This Agreement shall not be deemed to be approved by the Commission until the certifications shown in Exhibit "E" attached hereto and incorporated herein by reference, is executed. Consultant shall comply with all funding source requirements as further set forth in this Agreement and the attached exhibits.

G. Consultant desires to perform and assume responsibility for the provision of certain on-call right of way appraisal and appraisal review services for projects in the County of Riverside, California. Services shall be provided for the Commission or for the benefit of RCA, as directed, on the terms and conditions set forth in this Agreement and in the task order(s) to be solicited, awarded and authorized by Commission as further described in this Agreement ("Task Order"). Consultant represents that it is experienced in providing such services to public clients, is licensed in the State of California (if necessary), and is familiar with the plans of the Commission.

H. Commission desires to engage Consultant to render such services on an on-call basis. Services shall be ordered by Task Order(s) to be issued pursuant to this Agreement for future projects as set forth herein and in each Task Order (each such project shall be designated a "Project" under this Agreement).

## **Terms.**

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 on-call right of way appraisal and appraisal review services for the Projects ("Services"). The Services are generally described in Exhibit "A" attached hereto and incorporated herein by reference. The Services shall be more particularly described in the individual Task Orders issued by the Commission's Executive Director or designee. No Services shall be performed unless authorized by a Task Order. All Services shall be subject to, and performed in accordance with, this Agreement, the relevant Task Order, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

2. Task Orders; Commencement of Services; Schedule of Services. Services under this Agreement shall be requested by the Commission pursuant to Task Order requests. If Commission accepts Consultant's Task Order proposal, Commission shall issue a purchase order or executed task order for the Services ("Commission's Task Order Authorization"). Consultant's agreement to the final terms of a proposed Task Order, Commission's Task Order Authorization and Consultant's commencement of the Services shall indicate the Parties' agreement to the terms of the relevant Task Order.

Consultant shall commence Services under a Task Order within five (5)

days of receiving Commission's Task Order Authorization.

Consultant shall perform the Services expeditiously, in accordance with any schedule for the Services set forth in a Task Order ("Schedule of Services"). Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, Commission shall respond to Consultant's submittals in a timely manner. Upon request of the Commission, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

Task Orders may not be used to amend the language (or the terms) of this Agreement nor to exceed the scope of work under this Agreement.

3. Pre-Award Audit. As a result of the funding for this Project, and to the extent Caltrans procedures apply in connection therewith, issuance of a "Notice to Proceed" or other authorization to proceed under a Task Order may be contingent upon completion and approval of a pre-award audit. Any questions raised during the pre-award audit shall be resolved before Services are commenced under a Task Order. The funding provided under this Agreement is contingent on meeting all funding requirements and could be withdrawn, thereby entitling the Commission to terminate this Agreement, if the procedures are not completed. The Consultant's files shall be maintained in a manner to facilitate State process reviews. In addition, Caltrans may require that prior to performance of any work for which funding reimbursement through Caltrans is requested and provided, that Caltrans must give to Commission an "Authorization to Proceed".

4. Audit Procedures.

4.1 Consultant and certain subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an Independent Cost Review (ICR) Audit, or a CPA ICR audit work paper review. If selected for audit or review, this Agreement, Consultant's cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. This Agreement, Consultant's cost proposal, and ICR shall be adjusted by Consultant and approved by the Commission's contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into this Agreement by this reference if directed by Commission at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of the Agreement terms and cause for termination of this Agreement and disallowance of prior reimbursed costs. Additional audit provisions applicable to this Agreement are set forth in Sections 22 and 23 of this Agreement.

Section 4.2 and 4.3 shall apply to the extent applicable to the Task Order and funding

source.

4.2 During any Caltrans' review of the ICR audit work papers created by the Consultant's independent CPA (which may include review by the Independent Office of Audits and Investigations), Caltrans will work with the CPA and/or Consultant toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans identifies significant issues during the review and is unable to issue a cognizant approval letter, Commission will reimburse the Consultant at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines is received and approved by Caltrans.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
- b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
- c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.

4.3 If Caltrans is unable to issue a cognizant letter per Section 4.2 above, Caltrans may require Consultant to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the Caltrans' management letter. Caltrans will then have up to six (6) months to review the Consultant's and/or the independent CPA's revisions.

If the Consultant fails to comply with the provisions of this Section 4, or if Caltrans is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in Section 4.2 above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this Agreement.

Consultant may submit to Commission final invoice only when all of the following items have occurred: (1) Caltrans accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this Agreement has been completed to the satisfaction of Commission; and, (3) Caltrans has issued its final ICR review letter. The Consultant must submit its final invoice to Commission no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this Agreement and all Task Orders issued under this Agreement, and all other

agreements executed between the Commission and the Consultant, either as a prime or subconsultant, with the same fiscal period ICR.

5. Term.

5.1 This Agreement shall go into effect on the date first set forth above, contingent upon approval by Commission, and shall remain in effect for three (3) years, unless extended by contract amendment. The Commission may extend the term of this Agreement, in its sole discretion, for two (2) additional one (1) year period(s). The maximum term of this Agreement, including all option terms, shall not exceed five (5) years. No Task Order shall extend beyond the expiration date of this Agreement.

5.2 Consultant is advised that any recommendation for contract award is not binding on Commission until this Agreement is fully executed and approved by the Commission.

5.3 This Agreement shall remain in effect until the date set forth above, 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.

6. Commission's Contract Administrator. The Commission hereby designates the Commission's Executive Director, or his or her designee, to act as its Contract Administrator for the performance of this Agreement ("Commission's Contract Administrator"). Commission's Contract Administrator shall have the authority to act on behalf of the Commission for all purposes under this Agreement. Commission's Contract Administrator 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 Contract Administrator or his or her designee.

7. Consultant's Representative. Consultant hereby designates **Bradford Thompson, President** 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 or her 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 Contract Administrator 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 Contract Administrator.

8. 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 herein. The key personnel for performance of this Agreement are: **Bradford Thompson, President and Scott Thompson, Vice President**, or as otherwise identified in the Task Order.

9. Standard of Care; License. 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 and RCA 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.

10. 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. Consultant hereby indemnifies and holds the Commission and RCA harmless, pursuant to the indemnification provisions contained in this Agreement, from any and all claims that may be made against the Commission based



upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

## 11. Project Progress.

11.1 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 Contract Administrator.

11.2 Trend Meetings. Consultant shall conduct trend meetings with the Commission's Contract Administrator 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.

11.3 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.

## 12. Delay in Performance.

12.1 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, pandemics, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather, performance of such act shall be excused for the period of such delay.

12.2 Written Notice. If Consultant believes it is entitled to an extension of time due to conditions set forth in subsection 12.1, 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.

12.3 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.

13. 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 Contract Administrator 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 Federal funding. In the event that Commission's Contract Administrator, in his or her sole discretion, determines the formally submitted work product to be not in accordance with the standard of care established under this Agreement, Commission's Contract Administrator may require Consultant to revise and resubmit the work at no cost to the Commission.

14. 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.

15. Opportunity to Cure; Inspection of Work. 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. Consultant shall allow the Commission's Contract Administrator and Caltrans to inspect or review Consultant's work in progress at any reasonable time.

16. Final Acceptance. Upon determination by the Commission that Consultant has satisfactorily completed the Services required under this Agreement and within the term set forth herein 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.

17. 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 the United States Department of Transportation. For example, and not by way of limitation, a signed Categorical Exclusion, Finding of No Significant Impact, or published Record of Decision may be required to be approved and/or completed by the United States Department of Transportation. For Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such 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, RCA and their 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.

## 18. Fees and Payment.

18.1 The method of payment for this Agreement will be based specific rates of compensation. Consultant will be reimbursed for hours worked at the hourly rates specified in the Consultant's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

18.2 In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order.

18.3 Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's approved Cost Proposal.

18.4 Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. Consultant will be responsible for transportation and subsistence costs in excess of State rates.

18.5 When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

18.6 Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred. No payment will be made prior to approval or for any work performed prior to approval of this Agreement, or prior to issuance of a Task Order.

18.7 Consultant will be reimbursed within thirty (30) days upon approval by Commission's Contract Administrator of itemized invoices submitted by Consultant. Separate invoices itemizing all costs are required for all work performed under each Task Order. Commission's Contract Administrator shall notify Consultant of any disputed items contained in an invoice, and payment for such items shall be withheld pending resolution of the Commission's concerns.

18.8 Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title and Task Order number.

Invoices shall be mailed to Commission's Contract Administrator at the following address:

Riverside County Transportation Commission  
Attention: Accounts Payable  
P.O. 12008  
Riverside, CA 92502

18.9 The total amount payable by Commission for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment. If Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

18.10 Commission has or will enter into six (6) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("On-Call Right of Way Contracts"). The other On-Call Right of Way Contracts are **Bender Rosenthal, Inc., 25-31-008-00; CBRE, Inc., 25-31-046-00; Hawran & Malm LLC, 25-31-047-00; R.P. Laurain & Associates., 23-31-048-00, and Riggs & Riggs, Inc., 25-31-049-00.** The total amount payable by Commission for the On-Call Right of Way Contracts shall not exceed a cumulative maximum total value of Seven Hundred Seventy-One Thousand Dollars (\$771,000) ("NTE Sum"). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the On-Call Right of Way Contracts through Task Orders. Each time a Task Order is awarded under any of the On-Call Right of Way Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the On-Call Right of Way Contracts. The notice must identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Commission must not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant must not enter into a Task Order that exceeds the NTE Sum.

18.11 All subcontracts in excess of \$25,000 shall contain the above provisions.

19. Disputes.

19.1 Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by mutual agreement of the Parties shall be decided by a committee consisting of RCTC's Contract Administrator and the Director of Capital Projects, who may consider written or verbal information submitted by Consultant.

19.2 Not later than 30 days after completion of all Services under this Agreement, Consultant may request review by the Commission's Executive Director of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

19.3 Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this Agreement.

20. Termination; Suspension.

20.1 Commission reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Consultant, for any or no reason, with the reasons for termination stated in the notice. Commission may terminate Services under a Task Order, at any time, for any or no reason, with the effective date of termination to be specified in the notice of termination of Task Order.

20.2 Commission may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, Commission may proceed with the Services in any manner deemed proper by Commission. If Commission terminates this Agreement with Consultant, Commission shall pay Consultant the sum due to Consultant under this Agreement for Services completed and accepted prior to termination, unless the cost of completion to Commission exceeds the funds remaining in the Agreement. In such case, the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

20.3 In addition to the above, payment upon termination 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 Contract Administrator 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

20.4 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.

20.5 In addition to the above, 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 this Agreement. Termination of this Agreement for cause may be considered by the Commission in determining whether to enter into future agreements with Consultant.

20.6 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.

20.7 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.

20.8 Consultant may not terminate this Agreement except for cause.

21.9 In addition to the termination rights above, Commission may temporarily suspend this Agreement or Services under any Task Order, at no additional cost to Commission, provided that Consultant is given written notice of temporary suspension. If Commission gives such notice of temporary suspension, Consultant shall immediately suspend its activities under the relevant Task Order(s). A temporary suspension may be issued concurrent with a notice of termination.

## 21. Cost Principles and Administrative Requirements.

21.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

21.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

21.3 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to Commission.

21.4 All subcontracts in excess of \$25,000 shall contain the above provisions.

22. Retention of Records/Audit. For the purpose of determining compliance with, as applicable, 2 CFR Part 200, Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and

other matters connected with the performance of this Agreement pursuant to Government Code 8546.7; Consultant, subconsultants, and Commission shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering this Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under this Agreement. The State, State Auditor, Commission, or any duly authorized representative of the State or Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to this Agreement and, if applicable, indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

22.1 Accounting System. Consultant 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 Consultant 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.

23. Audit Review Procedures.

23.1 Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by Commission's Chief Financial Officer.

23.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by Commission's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

23.3 Neither the pendency of a dispute nor its consideration by Commission shall excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.

24. Subcontracting.

24.1 Nothing contained in this Agreement or otherwise, shall create any contractual relation between Commission and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to Commission and RCA for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from Commission's obligation to make payments to the Consultant.

24.2 Consultant shall perform the Services contemplated with resources available within its own organization and no portion of the Services pertinent to this Agreement shall be subcontracted without written authorization by Commission's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

24.3 Consultant shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to Consultant by Commission.

24.4 Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.

24.5 Any substitution of subconsultant(s) must be approved in writing by Commission's Contract Administrator prior to the start of work by the subconsultant(s).

24.6 Exhibit "B" may set forth the rates at which each subconsultant shall bill the Consultant for Services and that are subject to reimbursement by the Commission to Consultant. Additional Direct Costs, as defined in Exhibit "B" shall be the same for both the Consultant and all subconsultants, unless otherwise identified in Exhibit "B" or in a Task Order. The subconsultant rate schedules and cost proposals contained herein are for accounting purposes only.

## 25. Equipment Purchase

25.1 Prior authorization, in writing, by Commission's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract for supplies, equipment, or services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

25.2 For purchase of any item, service or consulting work not covered in the Cost Proposal and exceeding \$5,000 prior authorization, in writing, by Commission's Contract Administrator is required. Three competitive quotations must be submitted with the request for such purchase, or the absence of bidding must be adequately justified.

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



terms and conditions of such sale must be approved in advance by Commission. 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the Project.

25.4 All subcontracts in excess \$25,000 shall contain the above provisions.

26. Labor Code Requirements.

26.1 Prevailing Wages.

(a) If applicable, Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the Services.

(b) When prevailing wages apply to the Services described in the Scope of Services, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

(c) Copies of the prevailing rate of per diem wages in effect at commencement of this Agreement 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, RCA and their 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.

26.2 DIR Registration. If the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

26.3 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 Consultant or the Services are not subject to the Eight-Hour Law. Consultant shall forfeit to Commission 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 Consultant or the Services are not subject to the Eight-Hour Law.

26.4 Employment of Apprentices. This Agreement shall not prevent the employment of properly indentured apprentices in accordance with the California Labor Code, and no employer or labor union shall refuse to accept otherwise qualified employees as indentured apprentices on the work performed hereunder solely on the ground of race, creed, national origin, ancestry, color or sex. Every qualified apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which he or she is employed and shall be employed only in the craft or trade to which he or she is registered.

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

The parties expressly understand that the responsibility for compliance with provisions of this Section and with Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code in regard to all apprenticeable occupations lies with Consultant

27. Ownership of Materials/Confidentiality.

27.1 Documents & Data. This Agreement creates an exclusive and perpetual license for Commission and RCA 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 and RCA are 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 or RCA.

Commission and RCA 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 and RCA's sole risk.

27.2 Intellectual Property. In addition, Commission and RCA 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 and RCA 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.

27.3 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 or RCA'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.

27.4 Infringement Indemnification. Consultant shall defend, indemnify and hold the Commission, RCA, their directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by Commission or RCA of the Documents & Data, including any method, process, product, or concept specified or depicted.

28. Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold Commission, RCA, Caltrans and their 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, inverse condemnation, and any claims related to property acquisition and relocation rules or failure to detect or abate hazardous materials, which are brought by a third party, and which, in any manner arise out of or are 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, RCA, Caltrans, and their directors, officials, officers, employees, consultants, agents, or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Commission, RCA, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission, RCA, Caltrans and their 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, RCA, Caltrans or their directors, officials officers, employees, consultants, agents, or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful

misconduct of the Consultant and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

## 29. Insurance.

29.1 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 a form and with insurance companies acceptable to the Commission. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this Section.

29.2 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 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. Consultant shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit. Limits may be achieved by any combination of primary and excess or umbrella liability insurance; (2) *Automobile Liability*: \$2,000,000 per accident for bodily injury and property damage. Limits may be achieved by any combination of primary and excess or umbrella liability insurance; and (3) *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.

29.3 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. For Consultant, such insurance shall be in an amount not less than \$2,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically

designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. Subconsultants of Consultant shall obtain such insurance in an amount not less than \$1,000,000 per claim. Notwithstanding the foregoing, the Commission may consider written requests to lower or dispense with the errors and omissions liability insurance requirement contained in this Section for certain subconsultants of Consultant, on a case-by-case basis, depending on the nature and scope of the Services to be provided by the subconsultant. Approval of such request shall be in writing, signed by the Commission's Contract Administrator.

29.4 Aircraft Liability Insurance. Prior to conducting any Services requiring use of aircraft, Consultant shall procure and maintain, or cause to be procured and maintained, aircraft liability insurance or equivalent form, with a single limit as shall be required by the Commission. Such insurance shall include coverage for owned, hired and non-owned aircraft and passengers, and shall name, or be endorsed to name, the Commission, Caltrans and their directors, officials, officers, employees and agents as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant.

29.5 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) 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 the Commission, RCA, 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 the Commission's,

RCA's 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) the Commission, RCA, 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 Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Commission, RCA, Caltrans and their 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, RCA, Caltrans and their 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.

(c) Workers' Compensation and Employers Liability Coverage.

(i) Consultant 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 the Commission, RCA, Caltrans and their 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.

(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 the Commission, RCA, Caltrans and their 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 the Commission. 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) Consultant shall provide the Commission at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant 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 Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the Commission 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. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant 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 Consultant, and any approval of said insurance by the Commission, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant 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, Commission has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Commission will be promptly reimbursed by Consultant or Commission will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Commission may cancel this Agreement. The Commission may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(viii) Neither the Commission, RCA 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.

29.6 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, RCA, their 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 expense.

29.7 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.

29.8 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.

29.9 Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the Commission that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the Commission as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, the Commission may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

29.10 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.

30. 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.

31. 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, other than a Cardinal Change. For purposes of this Agreement, a Cardinal Change is a change which is "outside the scope" of the Agreement; in other words, work which should not be regarded as having been fairly and reasonably within the contemplation of the parties when the Agreement was entered into. An example of a change which is not a Cardinal Change would be where, in a contract to construct a building there are many changes in the materials used, but the size and layout of the building remains the same. Cardinal Changes are not within the authority of this provision to order, and shall be processed by the Commission as "sole source" procurements according to applicable law, including the requirements of FTA Circular 4220.1D, paragraph 9(f).

(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.

### 32. Prohibited Interests.

32.1 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.

### 32.2 Consultant Conflict of Interest.

(a) Consultant shall disclose any financial, business, or other relationship with Commission that may have an impact upon the outcome of this Agreement. Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

(b) Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

32.3 Commission 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.

32.4 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.

32.5 Covenant Against Contingent Fees. As required in connection with federal funding, the Consultant 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 the terms herein, 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.

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

32.7 Covenant Against Expenditure of Commission, State or Federal Funds for Lobbying. The Consultant certifies that to the best of his/ her knowledge and belief no state, federal or local agency appropriated funds have been paid, or will be paid by or on behalf of the Consultant to any person for the purpose of influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the award of any state or federal contract, grant, loan, or cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

(a) If any funds other than federal appropriated funds have been paid, or will be paid to any person for the purpose of influencing or attempting to influence

an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this Agreement, the Consultant shall complete and submit the attached Exhibit "F", Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with the attached instructions.

(b) The Consultant's certification provided in this Section is a material representation of fact upon which reliance was placed when this Agreement was entered into, and is a prerequisite for entering into this Agreement pursuant to Section 1352, Title 31, US. Code. Failure to comply with the restrictions on expenditures, or the disclosure and certification requirements set forth in Section 1352, Title 31, US. Code may result in a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) The Consultant also agrees by signing this Agreement that he/she shall require that the language set forth in this Section be included in all Consultant subcontracts which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

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

33. 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.

34. Right to Employ Other Consultants. Commission and RCA reserve the right to employ other consultants in connection with the Project.

35. Governing Law. This Agreement shall be governed by and construed with the laws of the State of California. Venue shall be in Riverside County.

36. Disputes; Attorneys' Fees.

36.1 Prior to commencing any action hereunder, the Parties shall attempt in good faith to resolve any dispute arising between them. The pendency of a dispute shall not excuse Consultant from full and timely performance of the Services.

36.2. If the Parties are unable to resolve a dispute after attempting in good faith to do so, the Parties may seek any other available remedy to resolve the dispute. 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.

37. Time of Essence. Time is of the essence for each and every provision of this Agreement.

38. 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.

39. 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:**

Thompson & Thompson Real Estate  
Valuation and Consulting, Inc.  
109 N. Ivy Avenue, Ste. A  
Monrovia, CA 91016  
Attn: Bradford Thompson

**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.

40. 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. Notwithstanding the foregoing, if any provision of this Agreement conflicts in any way with a state or federal requirement, as directed by the Commission (i) the state or federal requirement shall govern; or (ii) the more stringent requirement shall apply.

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

42. 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.

43. 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.

44. Provisions Applicable When State Funds or Federal Funds Are Involved. When funding for the Services under a Task Order is provided, in whole or in part, from Caltrans or other State funding source, Consultant shall also fully and adequately comply with the provisions included in Exhibit "C" (California Department of Transportation requirements) attached hereto and incorporated herein by reference. When funding for the Services under a Task Order is provided, in whole or in part, from the FHWA, Consultant shall also fully and adequately comply with the provisions included in Exhibit "D" (FHWA Requirements) attached hereto and incorporated herein by reference. When funding for the Services under a Task Order is provided, in whole or in part, from the FTA, Consultant shall also fully and adequately comply with the provisions included in Exhibit "F" (FTA Requirements) attached hereto and incorporated herein by reference.

45. 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, shall survive any such expiration or termination.

46. No Third Party Beneficiaries. RCA and Caltrans are intended third party beneficiaries of any right or benefit granted to RCA or Caltrans, respectively, under this Agreement. Except as set forth in the foregoing sentence, there are no other intended third party beneficiaries of any right or obligation assumed by the Parties.

47. Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

48. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

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

50. 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.

51. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties, and shall not be assigned by Consultant without the prior written consent of Commission.

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

53. 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.

55. Electronically Transmitted Signatures; Electronic Signatures. 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 this Agreement for all purposes. This Agreement may be signed using an electronic signature.

**[Signatures on following page]**

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**SIGNATURE PAGE  
TO  
PROFESSIONAL SERVICES AGREEMENT  
WITH STATE AND FHWA FUNDING/ASSISTANCE**

**ON CALL RIGHT OF WAY APPRAISAL AND APPRAISAL REVIEW SERVICES**

**IN WITNESS WHEREOF**, this Agreement was executed on the date first written above.

<p><b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b></p> <p>By: _____            <b>[INSERT NAME]</b>            Chair</p> <p><i>Approved as to Form:</i></p> <p>By: _____            Best, Best &amp; Krieger LLP            General Counsel</p>	<p><b>CONSULTANT THOMPSON &amp; THOMPSON REAL ESTATE VALUATION AND CONSULTING, INC.</b></p> <p>By: _____            Signature</p> <p>_____</p> <p style="text-align: center;">Name</p> <p>_____</p> <p style="text-align: center;">Title</p> <p><b>ATTEST:</b></p> <p>By: _____</p> <p>Its: _____</p>
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\* 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.



**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**[attached behind this page]**

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**EXHIBIT A-1**  
**SCOPE OF SERVICES**  
**RIGHT OF WAY APPRAISAL SERVICES**

The Riverside County Transportation Commission (Commission) has selected Consultant (Consultant or Appraiser) as part of an on-call bench of firms engaged to provide right of way appraisal services for developed or undeveloped residential, commercial, industrial, agricultural and railroad properties. Consultant shall produce appraisal reports for full or partial acquisitions, easements, temporary construction easements, leased or licensed properties, and sale or disposition of excess/surplus properties, as required by the Commission. Services shall be provided on an oncall/ as needed basis in support of current and future Commission Projects, Measure A Projects and projects done in partnership with other agencies, pursuant to Task Orders issued in the sole discretion of the Commission.

Task Orders shall be awarded through an additional qualification-based selection process.

Such appraisal services may include, but are not limited to, the following work program and must comply with the requirements below, as applicable:

1. Consultant shall prepare appraisals in accordance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and implemented by 49 CFR Part 24; the State of California Government Code, the State of California Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Code of Regulations Ch 6, Art 1, Section 6000 et seq.), the California Code of Civil Procedure, the Uniform Standards of Professional Appraisal Practice (USPAP), and in some cases, the Uniform Appraisal Standards for Federal Land Acquisition Act. Consultant must be licensed by the State of California.
2. Consultant shall prepare appraisals in accordance with the Uniform Appraisal Standards for Federal Land Acquisition ("Yellow Book"). Consultant must be

licensed by the State of California.

3. Consultant must be qualified to provide expert witness testimony and defend the opinions or conclusions reached in the appraisal at any Administrative or Judicial proceeding.

4. Deliverables shall typically consist of three (3) originals of the completed appraisal report and one (1) electronic copy, specialty reports and component valuations which may be performed by someone other than Consultant and incorporated into the overall fair market valuation.

5. Consultant may be required to meet with and coordinate their efforts with Commission staff, Commission legal counsel, and other consultants or Caltrans staff; participate in office or project site meetings.

6. Appraisal reports may be reviewed for acceptance and approval by Commission's review appraisers and Caltrans. Revisions may be required by reason of this review process. Consultants may be requested to complete and deliver revised and/or updated appraisals. In the event of non-acceptance due to errors or omissions, Consultant shall have fifteen (15) calendar days to make corrections and return the revised appraisals to the review appraiser.

7. For proposed acquisitions, the owner of the real property or a designated representative will be invited by the Appraiser to accompany the Appraiser during the inspection of the property. This invitation must be in the form of a letter entitled "Notice to Appraise" written by the Appraiser to the owner. A copy of the invitation will be included in the appraisal report.

8. It is the Appraiser's responsibility to contact the Commission's project engineers for discussion and/or clarification of the Construction in the Manner Proposed. This is critical in the appraisal of partial acquisitions and easements where the Appraiser may need cross sections or other project engineering information to complete the report.

9. The highest and best use for the property in the before condition must be determined and supported. If a partial acquisition is involved, the highest and best use of the property in the after condition must be determined and

supported. If the existing use is not the premise on which the valuation is based, the appraisal will contain an explanation justifying the determination that the property is available and adaptable for a different highest and best use and there is demand for that use in the market.

10. Where the acquisition involves only a part (or portion) of the property, the Appraiser will estimate any severance damages and special benefits to the remainder, including reasoning and market data to support the opinion or conclusion. The Appraiser will indicate if the remainder constitutes an economic or uneconomic unit in the market and/or to the present owner.

11. The California Eminent Domain Law will be followed in partial acquisitions. Special benefits are to be offset only against damages to the remainder in accordance with the law.

12. Appraisal for easement acquisitions will reflect the restrictive elements of the easement to be acquired and the potential effect of such elements on the utility of the property considering its highest and best use. Full details with respect to any interference with the highest and best use of the property affected must be explained and supported.

13. The Appraiser must estimate and support the economic rent, state the contract rent and the remaining term of the lease as of the date of value. Lessor and lessee responsibilities for paying major expenses, e.g., taxes, insurance and maintenance shall be included.

14. Appraiser shall itemize in detail the "improvements pertaining to realty" (Eminent Domain Law-CCP Section 1263.205) showing their replacement cost new, depreciated value in place, salvage value if any, and relocation estimate. To the extent possible, determine the ownership claims of the Improvements Pertaining to the Realty.

15. In cases where the Appraisal Assignment requires a Specialty Appraisal (Furniture, Fixtures, Machinery and Equipment) and/or Specialists Reports (title, survey, soils, engineering), Appraiser shall utilize the services of Commission's On-Call Consultants for such services or obtain Commission's

prior approval for any others. Fees charged by Commission's On-Call Consultants for Specialty Appraisal and/or Specialists Reports shall be paid directly by the Commission.

16. It is the Appraiser's responsibility to thoroughly review the Specialty Appraisal for adoption (with adjustments or not, as appropriate) and inclusion in the overall appraisal. The estimated values that the specialty items contribute to the overall value of the real estate will be separately stated but included in the total value of the property.

17. If any legal issues exist during the appraisal assignment, Appraiser shall request legal opinion. All legal opinions shall be rendered by Commission's legal counsel.

18. It is the Appraiser's responsibility to contact the Commission's legal counsel, if necessary, for discussion and/or clarification in identifying personal or real property.

19. If hazardous waste is discovered on the property, Appraiser shall seek further direction from the Commission.

**EXHIBIT A-2**  
**SCOPE OF SERVICES**  
**RIGHT OF WAY APPRAISAL REVIEW SERVICES**

The Riverside County Transportation Commission (Commission) has procured one or more Consultants (Consultant/Review Appraiser) to provide Appraisal Review Services on an On-Call/as needed basis in support of current Commission Projects, Measure A Projects, and projects done in partnership with other agencies, pursuant to Task Orders issued in the sole discretion of the Commission.

Task Orders shall be awarded through an additional qualification-based selection process. Such review appraisal services may include, but are not limited to, the following work programs, and/or comply with applicable requirements below:

1. When required by the Commission, Review Appraiser shall examine appraisals prepared by Commission's On-Call Residential, Commercial, Industrial, Railroad, and/or Agricultural appraisers.
2. When required by the Commission, Review Appraiser shall examine appraisals submitted by the property owners and comment by memorandum on the findings.
3. Review Appraiser shall provide Appraisal Review Services based on nationally recognized appraisal standards and techniques, including those established by the Uniform Standards of Professional Appraisal Practice (USPAP), the Uniform Appraisal Standards for Federal Land Acquisition; ensure compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and implemented by 49 CFR Part 24; the State of California Government Code, the State of California Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Code of Regulations CH 6, Art 1, Section 6000 et seq.), and the California Code of Civil Procedure. Comply with the requirements of the Caltrans Right of Way Manual, when applicable. Consultants must be licensed by the State of California.
4. Review Appraiser shall provide Appraisal Review Services to ensure compliance for appraisals prepared in accordance with the Uniform Appraisal Standards for Federal Land Acquisition ("Yellow Book"), Consultant must be licensed by the State of

California.

5. Review Appraiser must be qualified to provide expert witness testimony and defend the conclusions at any Administrative or Judicial proceeding.

6. Review Appraiser may be required to meet with and coordinate their efforts with Commission staff, Commission legal counsel, other consultants, or Caltrans staff; participate in office or project site meetings.

7. It is the Review Appraiser's responsibility to contact Commission's project engineers for discussion and/or clarification of any project design matters. This is critical in reviewing appraisals of partial acquisitions and easements where engineering information must be verified.

8. Review Appraiser shall examine appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

9. Appraisal Review reports may be reviewed for acceptance by Caltrans or other approving agencies.

10. If the Review Appraiser is unable to recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation or market value, and it is determined that it is not practical to obtain additional appraisal, Review Appraiser may develop appraisal documentation to recommend value.

11. The Review Appraiser and the Appraiser should discuss the appraisal assignment as soon work is assigned. The Review Appraiser and, if practical, the Appraiser should hold at least one field review to identify any legal issues that may exist. If any legal issues exist; the Review Appraiser shall request legal opinion.

12. All legal opinions shall be rendered by Commission's legal counsel and the appraisal prepared in accordance therewith.

13. The Review Appraiser's certification of the recommended value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation. Any damages or benefits to any remaining property shall also be identified in the statement.

14. All reports and deliverables shall typically consist of one (1) original and one (1)

electronic copy, including specialty reports which may be prepared by other consultants.

15. In cases where the assignment requires other services, subject to Commission authorization, Review Appraiser shall utilize the services of Commission's On-Call Consultants. Fees charged by Commission's On-Call Consultants shall be paid directly by Commission.

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**EXHIBIT "B"**  
**COMPENSATION AND PAYMENT**

**[attached behind this page]**

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**EXHIBIT "B"**  
**COMPENSATION SUMMARY<sup>1</sup>**

FISCAL YEAR	PROJECT	COST
FY 2024/25	Services	\$ 50,000.00
FY 2025/26	Services	307,500.00
FY 2026/27	Services	307,500.00
FY 2027/28	Services	307,500.00
FY 2028/29	Services	307,500.00
<b>SUBTOTAL</b>		<b>1,280,000.00</b>
<b>OTHER DIRECT COSTS</b>		<b>5,000.00</b>
<b>TOTAL COSTS</b>		<b>\$ 1,285,000.00</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.

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**TO BE INSERTED FROM RFP:**

**EXHIBIT “C” CALTRANS/STATE REQUIREMENTS**

**EXHIBIT “D” FHWA/CALTRANS REQUIREMENTS**

**EXHIBIT “F” FTA REQUIREMENTS**

**EXHIBIT “G” – LOBBYING ACTIVITIES DISCLOSURE**

**TO BE INSERTED FROM CONSULTANT PROPOSAL:**

**EXHIBIT “H” – DBE COMMITMENT FORM**

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**EXHIBIT "E"**

**CERTIFICATE OF CONSULTANT AND  
EXECUTIVE ORDER N-6-22 CERTIFICATION**

**[attached behind this page]**

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## CERTIFICATE OF CONSULTANT

I HEREBY CERTIFY that I am the \_\_\_\_\_ and duly authorized representative of the firm of \_\_\_\_\_ whose address is \_\_\_\_\_, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement; nor
- (b) agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the agreement; nor
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this agreement involving participation of Federal-aid Highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

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

Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**EXECUTIVE ORDER N-6-22 CERTIFICATION**

Executive Order N-6-22 issued by Governor Gavin Newsom on March 4, 2022, directs all agencies and departments that are subject to the Governor’s authority to (a) terminate any contracts with any individuals or entities that are determined to be a target of economic sanctions against Russia and Russian entities and individuals; and (b) refrain from entering into any new contracts with such individuals or entities while the aforementioned sanctions are in effect.

Executive Order N-6-22 also requires that any contractor that: (1) currently has a contract with the Riverside County Transportation Commission (“Commission”) funded through grant funds provided by the State of California; and/or (2) submits a bid or proposal or otherwise proposes to or enter into or renew a contract with the Commission with State of California grant funds, certify that the person is not the target of any economic sanctions against Russia and Russian entities and individuals.

The contractor hereby certifies, SUBJECT TO PENALTY FOR PERJURY, that a) the contractor is not a target of any economic sanctions against Russian and Russian entities and individuals as discussed in Executive Order N-6-22 and b) the person signing below is duly authorized to legally bind the Contractor. This certification is made under the laws of the State of California.

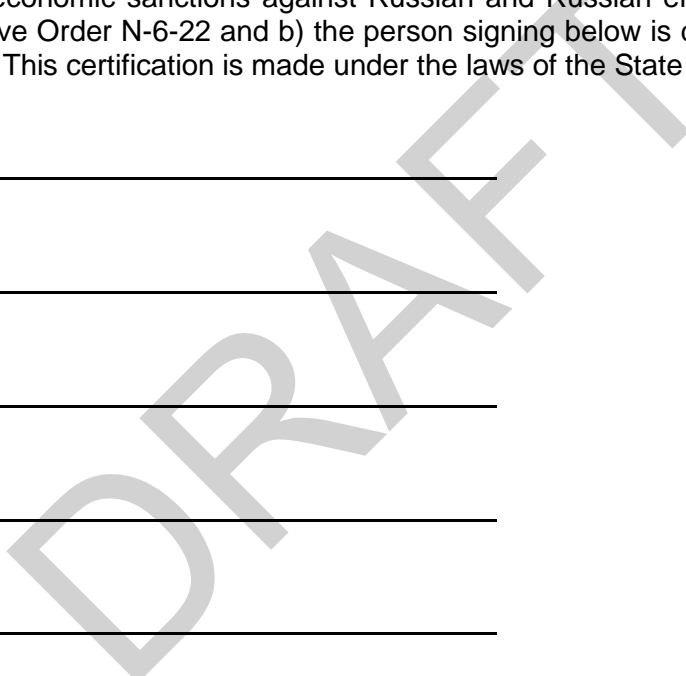
Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Date: \_\_\_\_\_



# **AGENDA ITEM 7**





<b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b>	
<b>DATE:</b>	February 24, 2025
<b>TO:</b>	Western Riverside County Programs and Projects Committee
<b>FROM:</b>	David Thomas, Toll Project Delivery Director
<b>THROUGH:</b>	Aaron Hake, Executive Director
<b>SUBJECT:</b>	State Route 91 Improvements East of Interstate 15 – Agreement with Parsons Transportation Group Inc.

**STAFF RECOMMENDATION:**

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Approve Agreement No. 09-31-081-16, Amendment No. 15, with Parsons Transportation Group Inc. (Parsons) for completion of a geometric feasibility study for State Route 91 (SR-91) improvements east of Interstate 15 (I-15) in the amount of \$198,130, plus a contingency amount of \$20,000, for a total amount not to exceed \$218,130;
- 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 approve contingency work up to the total not to exceed amount as required for these services; and
- 4) Authorize the expenditure of \$109,065 of 91 Express Lanes toll revenue designated as surplus in accordance with the 2013 Toll Revenue Bonds Indenture to fund 50 percent of the completion of the geometric feasibility study for 91 Improvements east of I-15.

**BACKGROUND INFORMATION:**

The SR-91 Corridor Improvement Project (CIP) was approved in 2012. As stated in the environmental impact report/environmental impact study, implementation of the project will be in phases over a 20-year period, beginning with an initial phase and culminating with the completion of the Ultimate Project by 2035. Separate phases would be identified and programmed to incorporate the components of the improvements on SR-91 and I-15 between the initial phase and completion of the Ultimate Project by 2035, as funding becomes available. The SR-91 Improvements east of I-15 (Project) is a component of the SR-91 CIP and is the subject of this staff report. Furthermore, the Project is also included in the 91 Implementation Plan and is a future Measure A commitment. See Figure 1 for a schematic representation of the Project improvements.

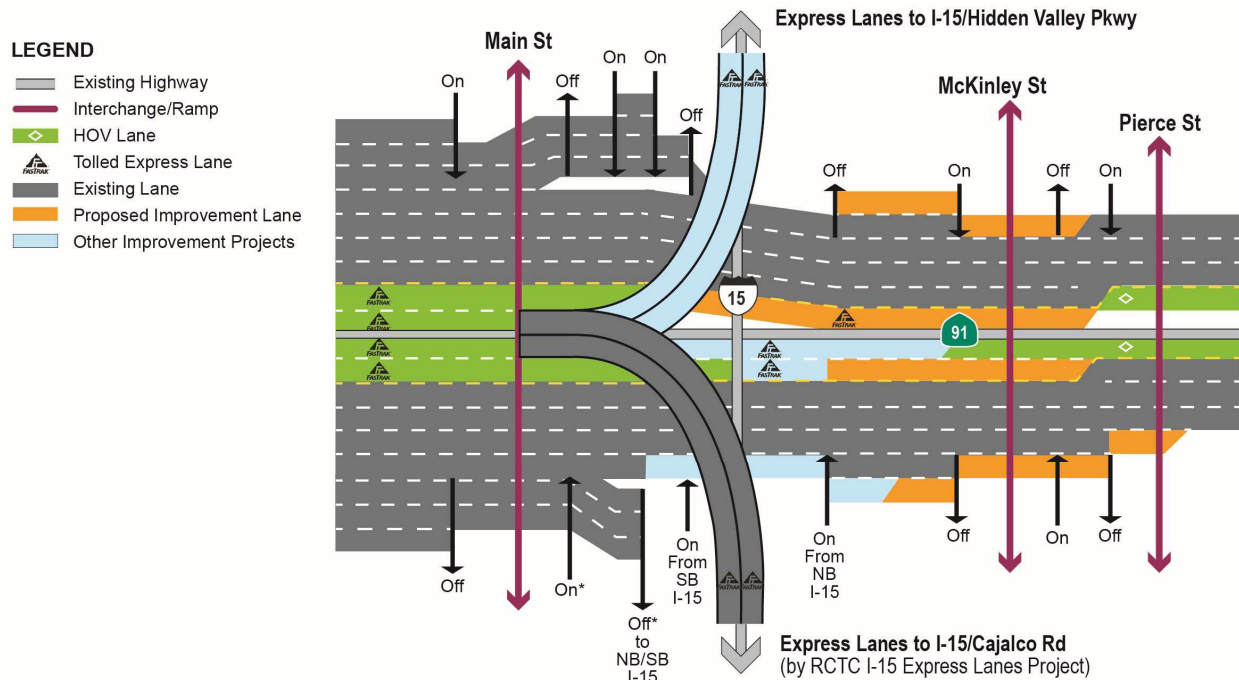


Figure 1 - State Route 91 Improvements East of Interstate 15

**DISCUSSION:**

The purpose for this geometric feasibility study is to better define the scope of the Project. The scope of this future phase of the SR-91 CIP needs to be updated to account for changes that have occurred since completion of the 91 CIP Initial Phase as follows:


1. The SR-91 CIP Initial Phase provided access to and from the 91 Express Lanes west of McKinley Street. This access will need to remain with the Project which was not accounted for in the original scope of the SR-91 CIP Ultimate Project.
2. The 15/91 Express Lanes Connector (ELC) project scope differs from initially envisioned including the addition of the new Eastbound 91 Express Lane (EB 2.0).
3. Caltrans is proposing a new auxiliary lane project on westbound SR-91 from Pierce Street to McKinley Street. This Caltrans project was not originally planned and will impact the scope of the Project.

This effort is also needed to support future updates to the 91 Implementation Plan, inform the Commission of the cost for programming, inform the operational analysis for prioritization of the Project, and inform the 15/91 Express Transit Connector project scoping. The operational analysis will be performed under separate contract authority. Furthermore, one of the purposes for this study is to evaluate how this Project may improve the westbound 91 Express Lanes entrance at I-15 that experiences recurring backup daily during peak periods.

Parsons was the Project and construction manager for both the SR-91 CIP and 15/91 ELC and remains under contract. Parsons understands the scope of both projects and is in the best position to perform this work in an efficient manner. Staff recommends that this work be performed as an amendment to Parsons SR-91 CIP contract.

**FISCAL IMPACT:**

Funding sources for this geometric feasibility study include a combination of local funds (91 Surplus Toll Revenue – 50 percent of project costs and Measure A – Economic Development – 50 percent of project costs). The Project’s objective is to enhance the existing transportation system.

Financial Information					
In Fiscal Year Budget:	Yes	Year:	FY 2024/25 FY 2025/26	Amount:	\$110,000 \$108,130
Source of Funds:	91 Surplus Toll Revenues and Measure A – Economic Development			Budget Adjustment:	No
GL/Project Accounting No.:	009105 81501 00000 0000 591 31 81501				
Fiscal Procedures Approved:				Date:	02/10/2025

Attachment: Draft Parsons Agreement No. 09-31-081-16 for Completion of a Geometric Feasibility Study for SR-91 Improvement East of I-15



**AMENDMENT NO. 15  
TO PROFESSIONAL SERVICES AGREEMENT FOR  
PROJECT AND CONSTRUCTION MANAGEMENT SERVICES  
FOR THE  
SR-91 CORRIDOR IMPROVEMENT PROJECT**

**1. PARTIES AND DATE**

This Amendment No. 15 to the Agreement for project and Construction Management Services is made and entered into as of ....., 2025, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("Commission") and PARSONS TRANSPORTATION GROUP INC., an Illinois corporation ("Consultant").

**2. RECITALS**

- 2.1 The Commission and the Consultant entered into an agreement, dated October 14, 2009, for the purpose of providing project and construction management services for the State Route 91 Corridor Improvement Project (the "Master Agreement") for a maximum not to exceed ("NTE") amount of \$35,539,299. The Commission Board of Directors' ("Commission Board") approval of the relevant agenda item also included approval of a contract contingency amount of \$4,260,701 to address additional, unanticipated scope and-or costs.
- 2.2 The Commission authorized the Consultant to proceed with the Services associated with the Master Agreement, and additional unanticipated work, using Limited Notices to Proceed (LNTPs).
- 2.3 LNTP No. 5, on file at the offices of the Commission, authorized the provision of additional Services, subject to the terms of the Master Agreement, and the release of Commission Board approved contingency funds for such Services in the amount of \$3,564,378. LNTP No. 5 increased the NTE value of the Master Agreement, including all prior LNTP's, to \$39,103,677.
- 2.4 The Commission and the Consultant entered into an Amendment No. 1 to the Master Agreement, dated as of July 3, 2012, in order to amend the Master Agreement, consistent with LNTP No. 6, by amending the Scope of Services of the Master Agreement to include additional Project Management, Planning and Design, Tolling and Operations, Contracts and Procurement, Contract Administration, and Construction Management Services required to: 1) complete and issue the Request for Proposal (RFP), 2) receive, evaluate and make a recommendation for award of a Design Build Contract, 3) and issue a Notice to Proceed for the State Route 91 Corridor Improvement Project, by including a Schedule of Services for the additional Services, and by providing compensation for the additional Services in the amount of \$18,434,545, and to include certain

additional terms to the Master Agreement related to attorney-client privilege and subpoenas and court orders. Amendment No. 1 increased the NTE value of the Master Agreement to \$57,538,223.

- 2.5 The Commission and the Consultant entered in an Amendment No. 2 to the Master Agreement, dated as of March 18, 2013, in order to add services within the scope of the original procurement, including, but not limited to, right of way architectural and engineering mitigation services, to amend the indemnification provision and to provide additional compensation for the additional services in the amount of \$1,760,000. Amendment No. 2 increased the NTE value of the Master Agreement, including all prior amendments, to \$59,298,223.
- 2.6 The Commission and the Consultant entered into an Amendment No. 3 to the Master Agreement, dated May 20, 2013, in order to extend the term of the Master Agreement, to include the Phase 2 Services, as that term is generally described in the Master Agreement, to include a new Phase 2 Scope of Services and Schedule of Services, to provide additional compensation for the Phase 2 Services, and to include certain additional terms to the Master Agreement applicable to Phase 2.
- 2.7 The Commission and the Consultant entered into an Amendment No. 4 to the Master Agreement, dated October 9, 2017, to extend the term and to include additional services required to relocate the existing SR-91 Express Lanes Customer Service Center.
- 2.8 The Commission and the Consultant entered into an Amendment No. 5 to the Master Agreement, dated October 22, 2019, to extend the term, to add a new Scope of Services for project development services related to the State Route 91 Corridor Operations Project ("91 COP") and to provide additional compensation.
- 2.9 The Commission and the Consultant entered into an Amendment No. 6 to the Master Agreement, dated May 31, 2019, to extend the term, to add additional services to complete the Project closeout, to provide additional compensation and to reinstate certain elements of the indemnification provisions included under the Master Agreement, and unintentionally omitted under Amendment No. 5.
- 2.10 The Commission and the Consultant entered into an Amendment No. 7A to the Master Agreement in order to extend the term, include additional services required to close-out the remaining right of way and environmental activities for the Project, and to include funding for such services.
- 2.11 The Commission and the Consultant entered into an Amendment No. 7 to the Master Agreement in order to clarify that the Scope of Services includes preparation of an Engineer's Technical Report ("ETR"), and to update and add a Limitation of Liability and Expiration Date, an Indemnification provision and Waiver of Consequential Damages with respect to the Independent Engineer Services and ETR Services.

- 2.12 The Commission and Atkinson-Walsh Joint Venture ("AWJV"), the Project design-builder, entered into a Settlement and Release Agreement dated as of October 21, 2021 ("Settlement Agreement") pursuant to which AWJV agreed to complete, in two phases, certain remediation work required on the Project. Phase 1 of the remediation work is referred to herein as the soil improvement work ("AWJV Phase 1 Work").
- 2.13 The Commission and the Consultant entered into an Amendment No. 8 to the Master Agreement, dated March 7 2022, in order to include additional Consultant support and oversight services of the AWJV Phase 1 Work, and to include funding for such services.
- 2.14 The Commission and the Consultant entered into Amendment No. 9 to the Master Agreement, dated June 29, 2022, in order to include additional Consultant support and oversight services of the AWJV Phase 2 Work, referred to as the "91 Refresh" Project, and to include funding for such services.
- 2.15 The Commission and Consultant entered into Amendment No. 10 to the Master Agreement, dated January 1, 2023, in order to extend the term.
- 2.16 The Commission and Consultant entered into Amendment No. 11 to the Master Agreement, dated June 21, 2023, in order to amend the scope of services for Consultant support and oversight services and to add additional compensation.
- 2.17 The Commission and Consultant entered into Amendment No. 12 to the Master Agreement, dated November 3, 2023, in order to add additional compensation to complete consultant support and oversight services.
- 2.18 The Commission and Consultant entered into Amendment No. 13 to the Master Agreement, dated December 31, 2023 in order to extend the term.
- 2.19 The Commission and Consultant entered into Amendment No. 14 to the Master Agreement, dated June 24, 2024, in order to extend the term through December 31, 2025, amend the scope of services, and add additional compensation.
- 2.20 The Commission and the Consultant now desire to amend the Master Agreement in order to amend the scope of services and add additional compensation.

### **3. TERMS**

- 3.1 The Services, as that term is defined in the Master Agreement, shall be amended to include the additional Consultant services for the geometric feasibility study for the 91 CIP improvements east of I-15, as further described in the Scope of Services attached to this Amendment No. 15 as Exhibit "A" and incorporated herein by reference.
- 3.2 The maximum compensation to be provided under this Amendment No. 15 for the Services set forth in the attached Exhibit "A" shall not exceed One Hundred Ninety-Eight Thousand, One Hundred and Thirty Dollars (\$198,130) as further detailed in Exhibit "B" attached to this Amendment No. 15 and incorporated herein by reference.

- 3.3 The Consultant fixed fee shall not exceed Seventeen Thousand, Nine Hundred Ninety-Six dollars (\$17,996).
- 3.4 This Amendment No. 15 may be signed in counterparts, each of which shall constitute an original. Facsimile signatures, including signatures transmitted by electronic mail, shall have the same force and effect as original signatures. This Amendment No. 15 may be signed using an electronic signature.
- 3.5 The recitals set forth above are incorporated into this Amendment No. 15 by reference as though fully set forth herein.
- 3.6 This Amendment No. 15 shall be governed by the laws of the State of California. Venue shall be in Riverside County.
- 3.7 Except as amended herein, 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. 15.

[Signatures on following page]



**SIGNATURE  
PAGE TO  
AGREEMENT NO. 09-31-081-16**

IN WITNESS WHEREOF, the parties hereto have executed this amendment  
no. 15 on the date first herein above written.

**RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION**

**PARSONS TRANSPORTATION  
GROUP, INC.**

By: \_\_\_\_\_  
Aaron Hake, Executive Director

By: \_\_\_\_\_  
Signature  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**APPROVED AS TO FORM**

**ATTEST:**

By: \_\_\_\_\_  
Best Best & Krieger LLP  
Counsel to Riverside County  
Transportation Commission

By: \_\_\_\_\_ N/A  
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.

**EXHIBIT A**

**SCOPE OF SERVICES**

**[attached behind this page]**

Draft

## EXHIBIT A

### SCOPE OF WORK

Consultant shall continue to furnish all Services, as that term is defined in the Master Agreement, as previously amended for the SR-91 CIP, including, but not limited to, all technical and professional services, labor, material, equipment, transportation, supervision and expertise, and incidental and customary work necessary to fully and adequately supply the professional services necessary to develop a Geometric Feasibility Study, which contemplates geometric alternatives for:

- a. EB SR-91, potential auxiliary lanes and auxiliary lane extensions between intersections from I-15 to Magnolia; and
- b. WB SR-91, potential extension of a single express lane with an entrance beginning east of McKinley.

The Geometric Feasibility Study is intended to develop multiple geometric concepts to input into a traffic analysis by others (Stantec), selection of a preferred alternative, and development of a cost estimate for the preferred alternative.

The approach to develop the Geometric Feasibility Study is broken down into three major subcategories:

1. Geometrics:

- Create schematics for evaluation and input into traffic analysis (traffic analysis by others)
- Create strip maps at 200 scale which will include auxiliary lanes, required pavement areas, locations of barriers or other railings (as required), lane stipes and buffers, and recommended ingress locations, and signage. Mapping will be developed from existing interchange topo and as-built files.
- Multiple alternatives will be developed, one of which will be a cost to make standard alternative.

2. Cost Estimate:

- Prepare a feasibility level construction cost estimate for the preferred alternative.

3. Deliverables:

- A. Strip Maps of alternatives
- B. Conceptual '11-page' Cost Estimate of the preferred alternative

The final deliverables are expected to be complete by end of June 2025 (FY '25)



# **AGENDA ITEM 8**



<b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b>	
<b>DATE:</b>	February 24, 2025
<b>TO:</b>	Western Riverside County Programs and Projects Committee
<b>FROM:</b>	John Tarascio, Senior Capital Projects Manager
<b>THROUGH:</b>	Erik Galloway, Project Delivery Director
<b>SUBJECT:</b>	Agreements and an Amendment for State Route 60/Potrero Boulevard Interchange Project – Phase II

**STAFF RECOMMENDATION:**

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Award Agreement No. 25-72-013-00 to Jacobs Project Management Co. for construction management, materials testing, construction surveying and public outreach services for State Route -60/Potrero Boulevard Interchange Project – Phase II (Project) in the amount of \$8,612,400, plus a contingency amount of \$861,240, for a total amount not to exceed \$9,473,640;
- 2) Approve Cooperative Agreement No. 25-72-069-00 with Caltrans that defines the roles and responsibilities for the construction of the Project and identifies and approves \$171,000 for Department Furnished Materials for the Project;
- 3) Approve Cooperative Agreement Amendment No. 24-72-064-01 with the city of Beaumont (City) to authorize Commission staff to be the lead agency on behalf of the City for the construction phase, increase the original cooperative agreement amount of \$5,706,000 by \$2,000,000, including contingency, for a total not to exceed \$7,706,000 for these additional services;
- 4) Approve Cooperative Agreement No. 25-72-066-00 with the City and Western Riverside Council of Governments (WRCOG) for the allocation of \$13,500,000 of Transportation Uniform Mitigation Fee (TUMF) Zone funds by WRCOG for the construction phase of the Project;
- 5) Authorize the Chair or Executive Director, pursuant to legal counsel review, to finalize and execute the agreements on behalf of the Commission;
- 6) Authorize the Executive Director, or designee, to approve contingency work as may be required for the Project; and
- 7) Authorize the Executive Director, or designee, pursuant to legal counsel review, to execute non-funding amendments to the agreements on behalf of the Commission.

**BACKGROUND INFORMATION:**

The Project is located in the city of Beaumont at the western end of the San Gorgonio Pass area of Riverside County on SR-60, between Jack Rabbit Trail and the SR-60/Interstate 10 junction.

The SR-60/Potrero Boulevard Interchange Project received approval of the environmental document on March 1, 2013. The proposed project was planned to be constructed in two phases. Phase I included the construction of the Potrero overcrossing structure, installation of concrete median barrier throughout the project limits, and extension of the existing Potrero Boulevard. No ramp connections to the SR-60 mainline were constructed as part of Phase I. Phase I of project was administered by the City and completed and opened to traffic in 2022.

The Project includes the design and construction of the ramps connecting the overcrossing structure to SR-60 and the remainder of the proposed project elements. Final design activities reached the 95 percent design submittal stage in May 2019. However, in July 2019, the Project was suspended due to insufficient funding. In June 2023, the California Transportation Commission (CTC) awarded the City Senate Bill 1 Trade Corridor Enhancement Program (TCEP) competitive funding for the construction phase of the Project. Subsequently, the City requested the Commission be the lead agency for the development of the final plans, specifications, & estimates (PS&E) phase, assist in obtaining Caltrans approval of the PS&E package, and perform the necessary right of way (ROW) services to allow the project to go to construction. PS&E development re-commenced in spring 2024 and the final design package was submitted to Caltrans on January 16, 2025, for final review and approval. The Project is scheduled to be presented at the upcoming June 2025 CTC meeting to seek the allocation of the TCEP funds for construction.

The proposed improvements include the following:

- Widening Potrero Boulevard on both sides of SR-60 to six (6) lanes;
- Adding two (2) new diagonal on-ramps;
- Adding two (2) new loop on-ramps;
- Adding two (2) new diagonal off-ramps; and
- Realigning Western Knolls Avenue with Potrero Boulevard located north of the proposed interchange.

In fall 2024, the City requested that the Commission be the lead agency for the implementation of the Construction phase of the Project. The City will reimburse the Commission for staff time and project management, construction management, construction, ROW-related costs, and any other costs related to delivery of the project.

## **DISCUSSION**

### **Construction Management Services Procurement**

Pursuant to Government Code 4525 et seq, selection of architect, engineer, and related services shall be 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 construction management services, materials testing, construction surveying, and public outreach services for the Project. Evaluation criteria included elements such as corporate qualifications of the offeror and team, qualifications of key



team personnel, construction management organization and staffing, project understanding and approach, materials inspection and testing, construction surveying, and the ability to respond to the requirements set forth under the terms of the request for qualifications (RFQ).

RFQ No. 25-72-013-00 for Construction Management, Materials Testing, Construction Surveying and Public Outreach Services for SR-60/Potrero Boulevard Interchange Project – Phase II was released by staff on November 7, 2024. The RFQ was posted on the Commission’s PlanetBids website, which is accessible through the Commission’s website. Through PlanetBids, 84 firms downloaded the RFQ and 22 of these firms are located in Riverside County. A pre-submittal conference was held on November 21, 2024, and attended by 28 firms. Staff responded to all questions submitted by potential proposers prior to the December 5, 2024, clarification deadline. Eight (8) firms, 3D Built (Long Beach, CA), Anser Advisory Management, LLC (Irvine, CA), HDR Construction Control Corporation (Riverside, CA), Jacobs Project Management Co. (Ontario, CA), Kleinfelder Construction Services, Inc. (Riverside, CA), Southstar Engineering & Consulting, Inc. (Riverside, CA), TRC Engineers (Ontario, CA), and WSP USA Inc. (San Bernardino, CA), submitted responsive and responsible statements of qualifications prior to the 2:00 p.m. submittal deadline on December 19, 2024. Utilizing the evaluation criteria set forth in the RFQ, the firms were evaluated and scored by an evaluation committee comprised of Commission and City staff.

Based on the evaluation committee’s assessment of the written statement of qualifications and pursuant to the terms of the RFQ, the evaluation committee shortlisted and invited three (3) firms (Anser Advisory Management, LLC, HDR Construction Control Corporation, Jacobs Project Management Co.) to the interview phase of the evaluation and selection process. Interviews were conducted on January 28, 2025.

As a result of the evaluation process, the evaluation committee recommends contract award to Jacobs Project Management Co. for construction management, materials testing, construction surveying, and public outreach services for the Project, as this firm earned the highest total evaluation score.

Subsequently, staff negotiated the price received for the Project services and established a fair and reasonable price. Staff recommends award of Agreement No. 25-72-013-00 for construction management, materials testing, construction surveying, and public outreach services for the Project in the amount of \$8,612,400, plus a contingency amount of \$861,240, for a total amount not to exceed \$9,473,640. A 10 percent contingency is assumed for this Project. Staff also recommends authorization for the Chair or Executive Director to finalize and execute the agreement for the Project, and authorization of the Executive Director, or designee, to approve contingency work up to the total not to exceed amount as required for these services.

### **Caltrans Construction Cooperative Agreement**

The Commission will be the implementing and responsible agency for advertisement, award, and administration (AAA) of the construction contract with Caltrans providing independent quality assurance reviews (oversight) of the Project at no cost. The cooperative agreement between the

Commission and Caltrans defines the roles and responsibilities of each agency. Staff recommends approval of Cooperative Agreement No. 25-72-069-00 between the Commission and Caltrans to define the roles and responsibilities for the Project. The cooperative agreement includes \$171,000 for the purchase of Department Furnished Materials from Caltrans. WRCOG TUMF Zone Funds are programmed to cover this expense. The construction cooperative agreement is currently in draft form and is under review by Caltrans and RCTC legal counsel for final edits and approval. It is not anticipated that notable changes will be required as a result of the pending reviews. The agreement is anticipated to be executed in March 2025.

**City of Beaumont Cooperative Agreement Amendment**

Amendment No. 24-72-064-01 to the City cooperative agreement designates RCTC as the lead agency for the construction phase and adds additional scope of services and funding for the Commission to complete and process required Utility Agreements and associated relocation expenses for the Project. This amendment adds \$2,000,000, including contingency, of additional funds to the original contract amount of \$5,706,000, for a total not to exceed \$7,706,000, for the Commission to manage the construction phase. This amendment is currently in draft form and is under review by City and RCTC legal counsels. It is not anticipated that notable changes will be required as a result of the pending reviews. The agreement is anticipated to be executed in March or April of 2025, following approval by the City.

**WRCOG TUMF Cooperative Agreement**

Agreement No. 25-72-066-00 is a tri-party cooperative agreement between the Commission, WRCOG, and the City. This agreement identifies and sets forth the terms and conditions by which WRCOG will release \$13,500,000 (to the Commission) of allocated funds through the TUMF Zone Program for the Project and outlines the administrative roles and responsibilities for each agency.


**FISCAL IMPACT:**

Funding for the project consists of a combination of local and state funds secured by the City which will be reimbursed directly to the Commission along with funding from WRCOG (\$13,500,000) allocated via their TUMF Zone Program (noted above).

The following table summarizes the expenditures associated with this item and related funding sources.

**Expenditure Schedule**

Item	Total Amount	Fund Source
1 Construction Management Services	\$9,473,640	Local
2 Caltrans Construction Cooperative Agreement	\$171,000	Local
<b>Total</b>	<b>\$9,644,640</b>	

Financial Information					
In Fiscal Year Budget:	N/A	Year:	FY 2025/26 FY 2026/27+	Amount:	\$4,500,000 \$5,144,640
Source of Funds:	Local Reimbursements		Budget Adjustment:		No
Project /GL Accounting No.:	005139 81304 00000 0000 / 210 72 81301 Construction Support 005139 81302 00000 0000 / 210 72 81301 CM 005139 81403 00000 0000 / 210 72 81401 ROW				
Fiscal Procedures Approved:				Date:	02/13/2025

Attachments:

- 1) Draft Agreement No. 25-72-013-00 with Jacobs Project Management Co.
- 2) Draft Cooperative Agreement No. 25-72-069-00 between the Commission and Caltrans
- 3) Draft Cooperative Agreement Amendment No. 24-72-064-01 between the Commission and City
- 4) Draft Cooperative Agreement No. 25-72-066-00 between the Commission, City, and WRCOG



Agreement No. 25-72-013-00

**PROFESSIONAL SERVICES AGREEMENT  
WITH FHWA AND STATE FUNDING/ASSISTANCE**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
JACOBS PROJECT MANAGEMENT  
FOR  
PROVISION OF CONSTRUCTION MANAGEMENT, MATERIALS TESTING,  
CONSTRUCTION SURVEYING AND PUBLIC OUTREACH SERVICES  
FOR THE  
SR-60/POTRERO BOULEVARD INTERCHANGE PROJECT – PHASE II**

**Parties and Date.**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2025, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and JACOBS PROJECT MANAGEMENT ("Consultant"), a CORPORATION. The Commission and Consultant are sometimes referred to herein individually as "Party", and collectively as the "Parties".

**Recitals.**

- A. 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").
- B. 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.
- C. 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.
- D. A source of funding for payment for professional services provided under this Agreement is Federal Highway Administration ("FHWA") funds administered by the California Department of Transportation ("Caltrans") from the United States Department of Transportation pursuant to the following project/program: **[\_\_INSERT FUNDING SOURCE\_\_]**.

E. In addition, funding for this Agreement may be provided using other State funding sources. Prior to or concurrent with execution of this Agreement, Consultant shall submit the executed Executive Order N-6-22 Certification attached to this Agreement as Exhibit "G" and incorporated herein by reference.

F. 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 **provision of construction management (MC), materials testing, construction surveying and public outreach services** to public clients, is licensed in the State of California (if necessary), and is familiar with the plans of the Commission.

G. The Commission desires to engage Consultant to render such services for the **SR-60/Potrero Boulevard Interchange Project – Phase II** ("Project"), as set forth in this Agreement.

### **Terms.**

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 (MC), materials testing, construction surveying and public outreach 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.

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. Pre-Award Audit. As a result of the federal funding for this Project, and to the extent Caltrans procedures apply in connection therewith, issuance of a "Notice to Proceed" may be contingent upon completion and approval of a pre-award audit. Any questions raised during the pre-award audit shall be resolved before the Commission will consider approval of this Agreement. The federal aid provided under this Agreement is contingent on meeting all Federal requirements and could be withdrawn, thereby entitling the Commission to terminate this Agreement, if the procedures are not completed. The Consultant's files shall be maintained in a manner to facilitate Federal and State process reviews. In addition, the applicable federal agency, or Caltrans acting in behalf of a federal agency, may require that prior to performance of any work for which Federal reimbursement is requested and provided, that said federal agency or Caltrans must give to Commission an "Authorization to Proceed".

#### 4. Caltrans Audit Procedures.

4.1 Consultant and certain subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an Independent Cost Review (ICR) Audit, or a CPA ICR audit work paper review. If selected for audit or review, this Agreement, Consultant's cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. This Agreement, Consultant's cost proposal, and ICR shall be adjusted by Consultant and approved by the Commission's contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into this Agreement by this reference if directed by Commission at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of the Agreement terms and cause for termination of this Agreement and disallowance of prior reimbursed costs. Additional audit provisions applicable to this Agreement are set forth in Sections 24 and 25 of this Agreement.

4.2 During Caltrans' review of the ICR audit work papers created by the Consultant's independent CPA (which may include review by the Independent Office of Audits and Investigations), Caltrans will work with the CPA and/or Consultant toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans identifies significant issues during the review and is unable to issue a cognizant approval letter, Commission will reimburse the Consultant at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by Caltrans.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) – the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
- b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
- c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.

4.3 If Caltrans is unable to issue a cognizant letter per Section 4.2 above, Caltrans may require Consultant to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the Caltrans' management letter. Caltrans will then have up to six (6) months to review the Consultant's and/or the independent CPA's revisions.

4.4 If the Consultant fails to comply with the provisions of this Section 4, or if Caltrans is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in Section 4.2 above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this Agreement.

4.5 Consultant may submit to Commission final invoice only when all of the following items have occurred: (1) Caltrans accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this Agreement has been completed to the satisfaction of Commission; and, (3) Caltrans has issued its final ICR review letter. The Consultant must submit its final invoice to Commission no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this Agreement, and all other agreements executed between the Commission and the Consultant, either as a prime or subconsultant, with the same fiscal period ICR.

## 5. Term.

5.1 This Agreement shall go into effect on the date first set forth above, contingent upon approval by Commission, and Consultant shall commence work after notification to proceed by Commission's Contract Administrator. This Agreement shall end on [\_\_\_INSERT END DATE\_\_\_], unless extended by contract amendment.

5.2 Consultant is advised that any recommendation for Agreement award is not binding on Commission until this Agreement is fully executed and approved by the Commission.

5.3 This Agreement shall remain in effect until the date set forth above, 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.

6. Commission's Contract Administrator. The Commission hereby designates the Commission's Executive Director, or his or her designee, to act as its Contract Administrator for the performance of this Agreement ("Commission's Contract Administrator"). Commission's Contract Administrator shall have the authority to act on behalf of the Commission for all purposes under this Agreement. Commission's Contract Administrator 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 Contract Administrator or his or her designee.

7. Consultant's Representative. Consultant hereby designates **GARY TOMASETTI** 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 or her 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 Contract Administrator 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 Contract Administrator.

8. 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 herein. The key personnel for performance of this Agreement are as follows: **GARY TOMASETTI, ANIKET PARKHI, AND GEORGE SALIBA.**

9. Standard of Care; Licenses; Evaluation.

9.1 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.

9.2 Consultant's performance will be evaluated by Commission. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the Agreement record.

10. 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. Consultant hereby indemnifies and holds the Commission harmless, pursuant to the indemnification provisions contained in this Agreement, from any and all claims that may be made against the Commission based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

11. 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 Contract Administrator, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

11.1 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 Contract Administrator.

11.2 Trend Meetings. Consultant shall conduct trend meetings with the Commission's Contract Administrator 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.

11.3 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.

## 12. Delay in Performance.

12.1 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.

12.2 Written Notice. If Consultant believes it is entitled to an extension of time due to conditions set forth in subsection 12.1, 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.

12.3 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.

13. 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 Contract Administrator 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 Federal funding. In the event that Commission's Contract Administrator, in his or her sole discretion, determines the formally submitted work product to be not in accordance with the standard of care established under this Agreement, Commission's Contract Administrator may require Consultant to revise and resubmit the work at no cost to the Commission.

14. 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.

15. Opportunity to Cure; Inspection of Work. 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. Consultant shall allow the Commission's Contract Administrator, Caltrans and FHWA to inspect or review Consultant's work in progress at any reasonable time.

16. Claims Filed by Contractor.

16.1 If claims are filed by the Commission's contractor for the Project ("Contractor") relating to work performed by Consultant's personnel, and additional information or assistance from the Consultant's personnel is required by the Commission in order to evaluate or defend against such claims; Consultant agrees to make reasonable efforts to make its personnel available for consultation with the Commission's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

16.2 Consultant's personnel that the Commission considers essential to assist in defending against Contractor claims will be made available on reasonable notice from the Commission. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for the Consultant's personnel services under this Agreement.

16.3 Services of the Consultant's personnel and other support staff in connection with Contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Agreement in order to finally resolve the claims.

16.4 Nothing contained in this Section shall be construed to in any way limit Consultant's indemnification obligations contained in Section 29. In the case of any conflict between this Section and Section 29, Section 29 shall govern. This Section is not intended to obligate the Commission to reimburse Consultant for time spent by its personnel related to Contractor claims for which Consultant is required to indemnify and defend the Commission pursuant to Section 29 of this Agreement.

17. Final Acceptance. Upon determination by the Commission that Consultant has satisfactorily completed the Services required under this Agreement and within the term

herein, 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.

18. 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 the United States Department of Transportation. For example, and not by way of limitation, a signed Categorical Exclusion, Finding of No Significant Impact, or published Record of Decision may be required to be approved and/or completed by the United States Department of Transportation. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such 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.

19. Fees and Payment.

19.1 The method of payment for this Agreement will be based on actual cost plus a fixed fee. Commission shall reimburse Consultant for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by Consultant in performance of the Services. Except as expressly set forth in subparagraph (a) below, Consultant shall not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved Consultant cost proposal attached hereto as Exhibit "C" and incorporated herein by reference ("Cost Proposal") unless additional reimbursement is provided for by a written amendment. In no event shall Consultant be reimbursed for overhead costs at a rate that exceeds Commission's approved overhead rate set forth in the Cost Proposal. In the event that Commission determines that a change to the Services from that specified in the Cost Proposal and

this Agreement is required, the contract time or actual costs reimbursable by Commission shall be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Section 19.8 shall not be exceeded, unless authorized by a written amendment.

(a) Annual Escalation. Price escalation in the not to exceed amount of \_\_\_\_% may be applied to the hourly rates set forth in Exhibit "C" twelve (12) months after the effective date of this Agreement and annually thereafter. Consultant shall notify Commission prior to submitting an invoice that includes rates escalated in accordance with this provision.

19.2 The indirect cost rate established for this Agreement is extended through the duration of this Agreement. Consultant's agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or Agreement award.

19.3 In addition to the allowable incurred costs, Commission shall pay Consultant a fixed fee of [ **INSERT DOLLAR AMOUNT** ]. The fixed fee is nonadjustable for the term of this Agreement, except in the event of a significant change in the Scope of Services, and such adjustment is made by written amendment.

19.4 Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal. In addition, payments to Consultant 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, unless otherwise authorized by Commission. If the rates invoiced are in excess of those authorized DPA rates, and Commission has not otherwise approved said rates, then Consultant is responsible for the cost difference and any overpayments shall be reimbursed to the Commission on demand.

19.5 When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.

19.6 Progress payments shall be made monthly in arrears based on Services provided and allowable incurred costs. A pro rata portion of Consultant's fixed fee shall be included in the monthly progress payments. Consultant shall not be entitled to and shall forfeit any portion of the fixed fee not earned as provided herein.

19.7 If Consultant fails to submit the required deliverable items according to the schedule set forth in the Scope of Services, Commission shall have the right to delay payment or terminate this Agreement in accordance with the provisions of Section 21 Termination.

19.8 No payment shall be made prior to approval of any Services, nor for any Services performed prior to approval of this Agreement.

19.9 Consultant shall be reimbursed, as promptly as fiscal procedures will permit upon receipt by Commission's Contract Administrator of undisputed, itemized invoices in triplicate. Invoices shall be submitted no later than 30 calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number and project title. Final invoice must contain the final cost and all credits due Commission including any equipment purchased under the Equipment Purchase provisions of this Agreement. The final invoice should be submitted within 60 calendar days after completion of Consultant's work. Invoices shall be mailed to Commission's Contract Administrator at the following address:

Riverside County Transportation Commission  
Attention: Accounts Payable  
P.O. 12008  
Riverside, CA 92502

19.10 The total amount payable by Commission including the fixed fee shall not exceed **Eight Million Six Hundred Twelve Thousand Four Hundred**.

19.11 Salary increases shall be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by Commission's Contract Administrator. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

19.12 Consultant shall not be reimbursed for any expenses unless authorized in writing by the Commission's Contract Administrator.

19.13 All subcontracts in excess of \$25,000 shall contain the above provisions.

## 20. Disputes.

20.1 Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by mutual agreement of the Parties shall be decided by a committee consisting of RCTC's Contract Administrator and the Director of Capital Projects, who may consider written or verbal information submitted by Consultant.

20.2 Not later than 30 days after completion of all Services under this Agreement, Consultant may request review by the Commission's Executive Director of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

20.3 Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this Agreement.

21. Termination; Suspension.

21.1 Commission reserves the right to terminate this Agreement for any or no reason upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

21.2 Commission may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, Commission may proceed with the work in any manner deemed proper by Commission. If Commission terminates this Agreement with Consultant, Commission shall pay Consultant the sum due to Consultant under this Agreement for Services completed and accepted prior to termination, unless the cost of completion to Commission exceeds the funds remaining in this Agreement. In such case, the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

21.3 In addition to the above, payment upon termination 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 Contract Administrator 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.

21.4 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.

21.5 Effect of Termination for Cause. In addition to the above, 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 herein. Termination of this Agreement for cause may be considered by the Commission in determining whether to enter into future agreements with Consultant.



21.6 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.

21.7 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.

21.8 Consultant may not terminate this Agreement except for cause.

21.9 Suspension. In addition to the termination rights above, Commission may temporarily suspend this Agreement, at no additional cost to Commission, provided that Consultant is given written notice of temporary suspension. If Commission gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this Agreement. A temporary suspension may be issued concurrent with a notice of termination.

22. Cost Principles and Administrative Requirements.

22.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

22.2 Consultant also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

22.3 Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to Commission.

22.4 All subcontracts in excess of \$25,000 shall contain the above provisions.

23. Retention of Records/Audit. For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of this Agreement pursuant to Government Code 8546.7; Consultant, subconsultants, and Commission shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering this Agreement. All parties shall make such materials available at their respective offices at all reasonable times during this Agreement period and for three years from the date of final payment under this Agreement. The state, State Auditor, Commission, FHWA, or any duly authorized representative of the Federal Government shall have

access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to this Agreement and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

23.1 Accounting System. Consultant 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 Consultant 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.

24. Audit Review Procedures.

24.1 Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by Commission's Chief Financial Officer.

24.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by Commission's Chief Financial Officer of unresolved audit issues. The request for review shall be submitted in writing.

24.3 Neither the pendency of a dispute nor its consideration by Commission shall excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.

25. Subcontracting.

25.1 Nothing contained in this Agreement or otherwise, shall create any contractual relation between Commission and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to Commission for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from Commission's obligation to make payments to the Consultant.

25.2 Consultant shall perform the Services with resources available within its own organization and no portion of the Services shall be subcontracted without written authorization by Commission's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

25.3 Consultant shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to Consultant by Commission.

25.4 Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.

25.5 Any substitution of subconsultant(s) must be approved in writing by Commission's Contract Administrator prior to the start of work by the subconsultant(s).

25.6 Exhibit "C" may also set forth the rates at which each subconsultant shall bill the Consultant for Services and that are subject to reimbursement by the Commission to Consultant. Additional Direct Costs, as defined in Exhibit "C" shall be the same for both the Consultant and all subconsultants, unless otherwise identified in Exhibit "C". The subconsultant rate schedules and cost proposals contained herein are for accounting purposes only.

## 26. Equipment Purchase

26.1 Prior authorization, in writing, by Commission's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

26.2 For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by Commission's Contract Administrator is required. Three competitive quotations must be submitted with the request for such purchase, or the absence of bidding must be adequately justified.

26.3 Any equipment purchased as a result of this Agreement is subject to the following:

Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, Commission shall receive a proper refund or credit at the conclusion of this Agreement, or if this Agreement is terminated, Consultant may either keep the equipment and credit Commission in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established Commission procedures; and credit Commission in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to Commission and Consultant. If Consultant determines to sell the equipment, the terms and conditions of such sale must be approved in advance by Commission. 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

26.4 All subcontracts in excess \$25,000 shall contain the above provisions.

27. Labor Code Requirements.

27.1 Prevailing Wages.

(a) Consultant and its Subconsultants shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, et. seq. and all Federal, State, and local laws and ordinances applicable to the Services.

(b) When prevailing wages apply to the Services described in the Scope of Services, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

(c) Copies of the prevailing rate of per diem wages in effect at commencement of this Agreement 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.

27.2 DIR Registration. If the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations. If applicable, Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

27.3 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 Consultant or the Services are not subject to the Eight-Hour Law. Consultant shall forfeit to Commission 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 Consultant or the Services are not subject to the Eight-Hour Law.

27.4 Employment of Apprentices. This Agreement shall not prevent the employment of properly indentured apprentices in accordance with the California Labor Code, and no employer or labor union shall refuse to accept otherwise qualified employees as indentured apprentices on the work performed hereunder solely on the ground of race, creed, national origin, ancestry, color or sex. Every qualified apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which he or she is employed and shall be employed only in the craft or trade to which he or she is registered.

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

The parties expressly understand that the responsibility for compliance with provisions of this Section and with Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code in regard to all apprenticeable occupations lies with Consultant and its Subconsultants.

28. Ownership of Materials/Confidentiality.

28.1 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.

28.2 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.

28.3 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.

28.4 **Infringement Indemnification.** Consultant shall defend, indemnify and hold the Commission, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by Commission of the Documents & Data, including any method, process, product, or concept specified or depicted.

29. **Indemnification.** To the fullest extent permitted by law, Consultant shall defend (with counsel of Commission's choosing), 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.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a

final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

Consultant's obligations as set forth in this Section shall survive expiration or termination of this Agreement.

### 30. Insurance.

30.1 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 a form and with insurance companies acceptable to the Commission. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this Section.

30.2 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 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. Consultant shall maintain limits no less than: (1) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit. Limits may be achieved by any combination of primary and excess or umbrella liability insurance; (2) Automobile Liability: \$2,000,000 per accident for bodily injury and property damage. Limits may be achieved by any combination of primary and excess or umbrella liability insurance; and (3) 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.

30.3 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. For Consultant, such insurance shall be in an amount not less than \$1,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. Subconsultants of Consultant shall obtain such insurance in an amount not less than \$1,000,000 per claim. Notwithstanding the foregoing, the Commission may consider written requests to lower or dispense with the errors and omissions liability insurance requirement contained in this Section for certain subconsultants of Consultant, on a case-by-case basis, depending on the nature and scope of the Services to be provided by the subconsultant. Approval of such request shall be in writing, signed by the Commission's Contract Administrator.

30.4 Aircraft Liability Insurance. Prior to conducting any Services requiring use of aircraft, Consultant shall procure and maintain, or cause to be procured and maintained, aircraft liability insurance or equivalent form, with a single limit as shall be required by the Commission. Such insurance shall include coverage for owned, hired and non-owned aircraft and passengers, and shall name, or be endorsed to name, the Commission, Caltrans and their directors, officials, officers, employees and agents as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant.

30.5 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) 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 the Commission, its 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 the Commission’s 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) the Commission, 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 Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Commission, Caltrans and their 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, Caltrans and their 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.

(c) Workers’ Compensation and Employers Liability Coverage.

(i) Consultant 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 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.

(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 the Commission, Caltrans and their 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 the Commission (if agreed to in a written contract or agreement) before the Commission's 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) Consultant shall provide the Commission at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant 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 Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the Commission 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. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant 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 Consultant, and any approval of said insurance by the Commission, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant 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, Commission has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Commission will be promptly reimbursed by Consultant or Commission will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Commission may cancel this Agreement. The Commission may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(viii) Neither the Commission nor any of its 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:

30.6 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.

30.7 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.

30.8 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.

30.9 Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the Commission that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the Commission as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, the Commission may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

30.10 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.

31. 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.

As between Consultant and the construction contractors only, the construction contractors shall remain solely responsible for construction safety notwithstanding any safety obligations of Consultant at the jobsite. The foregoing sentence shall not impact nor in any way modify or alter Consultant's indemnity and defense obligations to the Commission, as set forth in Section 29 of this Agreement, not any of Consultant's duties or obligations set forth under this Agreement, including the attached exhibits.

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

32. 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, other than a Cardinal Change. For purposes of this Agreement, a Cardinal Change is a change which is "outside the scope" of the Agreement; in other words, work which should not be regarded as having been fairly and reasonably within the contemplation of the parties when the Agreement was entered into. An example of a change which is not a Cardinal Change would be where, in a contract to construct a building there are many changes in the materials used, but the size and layout of the building remains the same. Cardinal Changes are not within the authority of this provision to order, and shall be processed by the Commission as "sole source" procurements according to applicable law, including the requirements of FTA Circular 4220.1D, paragraph 9(f).

(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.

### 33. Prohibited Interests.

33.1 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.

#### 33.2 Consultant Conflict of Interest.

(a) Consultant shall disclose any financial, business, or other relationship with Commission that may have an impact upon the outcome of this Agreement, or any ensuing Commission construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing Commission construction project, which will follow.

(b) Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of Services under this Agreement. Consultant agrees to advise Commission of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement. Consultant further agrees to complete any statements of economic interest if required by either Commission or State law.

(c) Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

(d) Consultant hereby certifies that the Consultant or subconsultant and any firm affiliated with the Consultant or subconsultant that bids on any construction contract or on any agreement to provide construction inspection for any construction project resulting from this Agreement, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

(e) Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design

services in connection with this Agreement shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement.

33.3 Commission 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.

33.4 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.

33.5 Covenant Against Contingent Fees. As required in connection with federal funding, the Consultant 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 the terms herein, 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.

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

33.7 Covenant Against Expenditure of Commission, State or Federal Funds for Lobbying. The Consultant certifies that to the best of his/ her knowledge and belief no state, federal or local agency appropriated funds have been paid, or will be paid by or on behalf of the Consultant to any person for the purpose of influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the award of any state or federal contract, grant, loan, or cooperative agreement, or

the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

(a) If any funds other than federal appropriated funds have been paid, or will be paid to any person for the purpose of influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this Agreement, the Consultant shall complete and submit the attached Exhibit "F", Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with the attached instructions.

(b) The Consultant's certification provided in this Section is a material representation of fact upon which reliance was placed when this Agreement was entered into, and is a prerequisite for entering into this Agreement pursuant to Section 1352, Title 31, US. Code. Failure to comply with the restrictions on expenditures, or the disclosure and certification requirements set forth in Section 1352, Title 31, US. Code may result in a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) The Consultant also agrees by signing this Agreement that he/she shall require that the language set forth in this Section be included in all Consultant subcontracts which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

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

34. 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.

35. Right to Employ Other Consultants. Commission reserves the right to employ other consultants in connection with the Project.

36. Governing Law. This Agreement shall be governed by and construed with the laws of the State of California. Venue shall be in Riverside County.



37. Disputes; Attorneys' Fees.

37.1 Prior to either party commencing any legal action under this Agreement, the Parties agree to try in good faith, to resolve any dispute amicably between them. If a dispute has not been resolved after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either Party may seek any other available remedy to resolve the dispute.

37.2. 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.

38. Time of Essence. Time is of the essence for each and every provision of this Agreement.

39. 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.

39.1 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 PROJECT MANAGEMENT  
3257 E. Guasti Rd.  
Ontario, CA 91761  
Attn: Jason Acres

COMMISSION:

Riverside County Transportation Commission  
4080 Lemon Street, 3rd 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.

40. 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.

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

42. 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.
43. 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.
44. Provisions Applicable When Federal Department of Transportation Funds Are Involved. When funding for the Services provided by this Agreement are provided, in whole or in part, from the United States Department of Transportation, Consultant shall also fully and adequately comply with the provisions included in Exhibit "D" (Federal Department of Transportation Requirements and California Department of Transportation (Caltrans) DBE program requirements) attached hereto and incorporated herein by reference.
45. 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, shall survive any such expiration or termination.
46. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.
47. Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.
48. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.
49. Subpoenas or Court Orders. Should Consultant receive a subpoena or court order related to this Agreement, the Services or the Project, Consultant shall immediately provide written notice of the subpoena or court order to the Commission. Consultant shall not respond to any such subpoena or court order until notice to the Commission is provided as required herein, and shall cooperate with the Commission in responding to the subpoena or court order.
50. 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.

51. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties, and shall not be assigned by Consultant without the prior written consent of Commission.

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

53. 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]**

DRAFT

**SIGNATURE PAGE  
TO  
PROFESSIONAL SERVICES AGREEMENT  
WITH FHWA FUNDING/ASSISTANCE**

**IN WITNESS WHEREOF**, this Agreement was executed on the date first written above.

<p><b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b></p> <p>By: _____ Aaron Hake Executive Director</p> <p><i>Approved as to Form:</i></p> <p>By: _____ Best, Best &amp; Krieger LLP General Counsel</p>	<p><b>CONSULTANT</b></p> <p>By: _____ Signature</p> <p>_____ Name</p> <p>_____ Title</p> <p><b>ATTEST:</b></p> <p>By: _____</p> <p>Its: _____</p>
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\* 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.

**EXHIBIT "A"**

**SCOPE OF SERVICES**

**[attached behind this page]**

DRAFT

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

Services will include pre-construction planning and specifications and estimate (PS&E) review; bid analysis and award recommendation; construction inspection; preparation of progress payments and change orders; schedule and claim analysis; Contractor interface and contract administration; office engineering; and other assorted duties as appropriate for construction management, as well as materials testing, construction surveying, public outreach, and project closeout tasks. The project's final design is scheduled for completion in the first quarter 2025.

**Construction Management Schedule (Tentative)**

The anticipated construction management schedule for the project is shown below:

CM Advertisement Date:	November 2024
SOQs Due:	December 2024
Recommendation to Committee:	February 2025
Anticipated Commission Award:	March 2025
CM Notice to Proceed	April 2025
Construction Contract Advertisement	July 2025
Construction Contract Start	December 2025
Anticipated Construction Completion	December 2027
Anticipated Plant Establishment Completion	December 2030
Complete Close-Out	March 2031

**Performance Requirements**

**Construction Management:** OFFEROR shall furnish a Project Manager or a Resident Engineer as a single point of contact for this agreement and to coordinate OFFEROR's operations with COMMISSION. The single point of contact shall be responsible for all matters related to OFFEROR's personnel and operations. The Resident Engineer shall be in responsible charge of construction activity within the Project. The Resident Engineer shall be a Civil Engineer, registered in the State of California. Other Assistant Resident Engineers may be assigned to each specific project responsibilities as needed. If the Resident Engineer is not also a registered Landscape Architect, a registered Landscape Architect shall be assigned to the project responsible for daily on-site inspections and decisions regarding highway planting and the irrigation systems that comprise a portion of the Project.

The number of OFFEROR personnel assigned to the project will vary throughout the duration of the agreement. OFFEROR personnel shall be assigned, in varying levels of responsibility, as needed by the OFFEROR to meet the project schedule, project requirements, and construction activities.

All overtime hours required by OFFEROR personnel shall be approved and authorized by COMMISSION prior each occurrence. OFFEROR shall exhaust every effort to minimize the overtime charges. OFFEROR shall provide oversight during all hours worked by the

construction Contractor. Hours worked at night to oversight construction activities will not require COMMISSION prior approval.

OFFEROR personnel shall be knowledgeable of and comply with all applicable local, state, and federal regulations related to construction and construction engineering, including United States Army Corps of Engineers standards and procedures. OFFEROR personnel shall cooperate and consult with COMMISSION, State, County, and City officials during the course of the Project. OFFEROR shall consult with and coordinate activities of third party agencies and utilities. OFFEROR personnel shall perform duties as may be required to assure that construction is being performed in accordance with the Project plans and specifications. OFFEROR personnel shall keep accurate and timely records and document all work performed by the Contractor and OFFEROR.

OFFEROR shall monitor for Contractor's compliance with the labor standards provisions of the contract and the related wage determination decisions of the Secretary of Labor.

OFFEROR personnel shall assist COMMISSION and local agencies in obtaining compliance with the safety and accident prevention provisions of the projects. Local agencies will retain jurisdictional control for traffic control.

All services required hereunder shall be performed in accordance with California Department of Transportation guidelines, regulations, policies, procedures, manuals, and standards, except as noted in the special provisions or superseded/augmented by Commission's procedures.

Provided below is a list of suggested basic staffing positions with qualifications per position. Proposer is not required to adhere to the suggested list but may propose as they believe warranted for the project.

- 1) Suggested Core Construction Management Staffing
  - a. Project Manager/ Resident Engineer PE \*
  - b. Project Controls
  - c. Office/Labor Compliance Administrator
  - d. Contract Manager/Change Order Engineer \*
  - e. Assistant Resident Engineer/Lead Inspector PE \*
  - f. Structure Representative PE \*
  - g. Structures Inspector
  - h. Storm Water Inspector QSP, QSD
  - i. Landscape Inspector
  - j. Civil/Roadway/Electric Inspector

\* Denoted as Key Personnel

Resume of Core Construction Management personnel shall be submitted to COMMISSION prior to assignment to the Project.

- 2) Support Services
  - a. Source Inspection
  - b. Surveys
  - c. Environmental Compliance
  - d. Biologist / Paleo / Bat Monitoring
  - e. Materials Testing
  - f. Drone Services
  - g. Crawling Camera/Video Inspection Services
  - h. Public Outreach

**Materials Testing:** The number of field testing personnel assigned to the project will vary throughout the duration of the construction contract. OFFEROR personnel will be assigned as needed by the Resident Engineer to meet the schedule of the construction Contractor.

A field technician will be required throughout the construction contract period. At times, additional technicians may be required to provide support for on-going construction activities. The duration of assignments could vary from a minimum of a few days to the full term of the project. OFFEROR personnel will be available within two (2) days of written notification by COMMISSION.

It is the intent of COMMISSION to maintain a consistency of material testing quality throughout each phase of each project. OFFEROR is therefore encouraged to provide, wherever and whenever possible, the same field personnel for the duration of the project.

On days when work is not performed by the construction Contractor, such as rainy or unsuitable weather days, OFFEROR will not provide services unless authorized by the COMMISSION Construction Manager.

If a member of OFFEROR's personnel is on a leave of absence, OFFEROR's Project Manager / Resident Engineer shall provide an equally qualified replacement employee until the original member returns to work. The replacement employee will meet all the requirements of a permanently assigned employee.

All personnel will be knowledgeable of, and comply with, all applicable local, Caltrans, and federal regulations; cooperate and consult with COMMISSION and local agency officials during the course of the contract; and perform other duties as may be required to assure that the construction is being performed in accordance with permit requirements, the project plans and specifications. OFFEROR's personnel will keep records and document the work as directed by the Resident Engineer.

OFFEROR personnel shall assist COMMISSION and local agencies in obtaining compliance with the safety and accident prevention provisions of the project. Local



agencies will retain jurisdictional control for local traffic control.

All services required hereunder will be performed in accordance with Caltrans regulations, policies, procedures, manuals, and standards as modified by the Commission's General Conditions and procedures.

**Construction Surveying:** OFFEROR will furnish surveying crew(s) to perform construction surveys for the project. The number of survey crew(s) assigned to the project will vary throughout the duration of the construction contract. OFFEROR personnel will be assigned as needed by the Resident Engineer to meet the schedule of the construction contractor. Survey crews may be requested to perform tasks associated with Right of Way (ROW) or design verification.

It is the intent of COMMISSION to maintain a consistency of construction survey quality throughout each phase of each project. Therefore, OFFEROR is encouraged to provide the same field personnel for the duration of construction. It is important that the Field Party Chief(s) assigned to a project be completely familiar with the survey control and staking requirements established for the project.

Construction surveying will not be performed when conditions such as weather, traffic, and other factors prevent safe and efficient operation.

If OFFEROR's survey crew personnel assigned to the project is on a leave of absence, the Project Manager / Resident Engineer shall provide an equally qualified replacement(s) until the original employee(s) returns to work. The replacement will be required to meet all the requirements of the permanently assigned employee.

OFFEROR personnel will:

- Be knowledgeable of, and comply with all, applicable local, state, and federal regulations.
- Cooperate and consult with COMMISSION officials during the course of the contract.
- Perform duties as may be required to assure construction is performed in accordance with the project plans and specifications.
- Keep contemporaneous records and document work as directed by the Resident Engineer.

All services required hereunder will be performed in accordance with Caltrans regulations, policies, procedures, manuals, and standards as modified by the Commission's General Conditions and procedures.

**Other supporting Services:** OFFERER shall provide qualified and experienced personnel to oversee and implement source inspection, environmental services, biology/Paleo/Bat monitoring services, drone/crawling camera/video inspection services and public outreach. A successful OFFERER will present and adopt an innovative approach to environmental stewardship and mitigation (including traffic management) and public outreach.

## **Duties and Responsibilities**

### **1. Pre-construction Services**

#### A. Plan Review

OFFEROR shall review construction contract documents prior to construction. Tasks include review of plans, specifications, technical reports, Resident Engineer's pending files, and associated items in order to verify completeness and consistency throughout the Project. OFFEROR shall perform an Office Engineer's type review checking for quantity discrepancies and consistency between plans, specifications and pay items. OFFEROR's shall perform a constructability review including a review of various discipline plans (e.g., layout, drainage, bridge, landscaping, electrical, etc.) for conflicting or missing information, a better way to build the project, opportunities for environmental stewardship, innovation and safe construction. It is expected that the OFFERER will implement initiatives related to Public Outreach and traffic management.

#### B. Schedule

OFFEROR shall review the proposed Project schedule, compare it to the Project plans and specifications, and provide recommendations to COMMISSION, as appropriate, to ensure efficiency of Contractor and OFFEROR operations and safe and expeditious completion of the Project.

#### C. Budget

OFFEROR shall review the Project estimate and provide recommendations to COMMISSION, as appropriate, to ensure efficient utilization of funds and control of project costs.

### **2. Bid Process**

#### A. Bid Documents

OFFEROR shall assist COMMISSION, as requested, with the following tasks:

- 1) Review of bid documents
- 2) Review bid questions and draft responses
- 3) Prepare bid tabulations

#### B. Pre-construction Meetings

OFFEROR shall assist COMMISSION in conducting pre-construction meetings, as

required, with all involved parties on the Project. Parties may include, but are not limited to, the Contractor, the Design Engineer, Caltrans, County, Cities, Utility companies, and developers.

C. Contract Award

OFFEROR shall assist COMMISSION, as requested, with the following tasks:

- 1) Review bids for completeness and responsiveness
- 2) Perform bid analysis
- 3) Check Contractor references, licenses, insurance, and sureties
- 4) Coordinate with prospective Contractor for award of construction contract.

All processes will be consistent with procedures outlined by Caltrans for Special Funded Programs.

**3. Project Administration**

- A. OFFEROR shall administer the project construction contract using Caltrans Construction Manual as a guideline.
- B. OFFEROR shall conduct regular project coordination meetings with Contractor, COMMISSION, local agencies, and design engineer, as appropriate.
- C. OFFEROR shall prepare a contractor progress payment forecast curve for the entire project duration (cash flow), complete monthly Contractor progress payments and maintain payment records and supporting documentation. All progress payments shall be reviewed by COMMISSION for approval.
- D. OFFEROR shall establish and maintain a web based platform to control all project correspondence including transmittals and submittals to allow access to the project information between the field and office teams and maximize efficient communication. Project record keeping shall include, but is not limited to, RE and Assistant RE daily reports, correspondence, memoranda, contract documents, requests for information (RFIs), change orders, claims, COMMISSION and engineer directives, meeting minutes, shop drawings, supplementary drawings, review and approval of submittals, schedule reviews and preparation of weekly working day statements, quantity calculations and/or documented field measurement/count and Daily Extra Work Reports that support progress payments. OFFEROR shall maintain a record of the names, addresses, email addresses, and telephone and fax numbers of the Contractors, subcontractors, and principal material suppliers.
- E. OFFEROR shall establish and maintain a filing system for the Project using the Caltrans Construction Manual as a guideline. OFFEROR shall transmit all Project records to the COMMISSION using an electronic transfer and collection system.

- F. The COMMISSION is committed to advancing environmental sustainability and reducing carbon emissions. To support this mission, OFFERER is required to adopt a paperless approach for all project records. This means that all records must be created and maintained electronically using digital software or programs. Project records should be high-quality, searchable, and directly generated from electronic sources. OFFERER is expected to minimize, and where feasible, eliminate the use of scanned documents, all signatures must be obtained electronically or digitally to further reduce the environmental impact and maintain the document quality.
- G. OFFEROR shall monitor Contractors' construction schedules on an ongoing basis and alert COMMISSION to conditions that may lead to delays in completion of the Project.
- H. OFFEROR shall prepare and submit a Weekly Report and Monthly Report for the project. The Monthly Report shall describe construction activity, traffic and site safety incidents, accomplishments, issues and status of submittals, RFIs, Change Orders and the project budget and schedule status against the approved Baseline Schedule. Construction photos shall be submitted with each weekly and monthly report. Monthly Reports shall track the quantities, hours, number of test and total cost of the following items:
- Management, Coordination, Administration
  - Constructibility
  - Bid Analysis and Award Recommendation
  - Clearing and Grabbing, Demolition and Site Preparation
  - Earthwork
  - Piles, Foundations, Columns
  - Drainage and Miscellaneous Concrete
  - Labor Compliance
  - Bridge Structure
  - Retaining and MSE Walls
  - Soil Nails
  - HMA Pavement
  - Concrete Pavement
  - Electrical Work
  - Closeout
- I. OFFEROR shall review and ensure compliance with environmental requirements.
- J. OFFEROR shall assure that the Project meets all provisions of the COMMISSION and Caltrans Quality Assurance Program Manual. OFFEROR shall prepare and submit a project-specific Quality Assurance Plan (QAP) to the COMMISSION for review and approval. The QAP shall be reviewed quarterly and updated as necessary. All OFFEROR's project personnel shall indicate their review of the QAP by signature.
- K. OFFEROR shall review Contractors' certified payroll records and other labor

compliance records and assure the construction Contractor's compliance with Contract requirements.

- L. OFFEROR shall monitor and maintain records to assure that the construction Contractor complies with all provisions of the Storm Water Pollution Prevention Plan (SWPPP).
- M. OFFEROR shall assure that the Project meets all applicable regulations of the Air Quality Management District (AQMD).
- N. OFFEROR shall prepare and submit all water discharge, ad-hoc and annual reports to Waterboard stormwater multiple application and report tracking system (SMARTS).

#### **4. Construction Coordination**

- A. OFFEROR shall provide a minimum of one qualified Project Manager / Resident Engineer, as needed to effectively manage the Project.
- B. OFFEROR Project Manager/ Resident Engineer shall act as the prime point of contact between Contractor, COMMISSION, OFFEROR's construction surveyor, OFFEROR's materials inspector, OFFEROR's public outreach, environmental services and utility companies. OFFEROR may, when requested by COMMISSION, act as point of contact between design engineers, cities, and the public.
- C. OFFEROR shall maintain regular contact with COMMISSION's Construction Manager.
- D. OFFEROR shall coordinate relocations and arrangements for power for the site with utility companies and their designees.
- E. OFFEROR shall review Project plans and special provisions for possible errors and deficiencies prior to construction of any specific element and report such findings to COMMISSION. Should COMMISSION determine that changes are necessary, OFFEROR shall process and implement change orders in accordance with contract documents.
- F. OFFEROR shall provide all required monitoring, coordination, and tracking of construction progress to ensure the Project proceeds on schedule and according to the order of work in the plans and special provisions. OFFEROR shall expedite work, as required, to maintain schedule in conjunction with the overall construction staging program.
- G. OFFEROR shall review shop drawings, coordinating with the Source Inspection Project Manager and Division of Structures as appropriate. OFFEROR shall coordinate resolution of Requests for Information (RFI) with the Commission's designer and communicate actions and status with the Commission's Construction

Manager. OFFEROR shall log and track all submittals and requests.

- H. OFFEROR shall provide a qualified SWPPP coordinator who shall review Contractor-prepared Storm Water Pollution Prevention Plans (SWPPP) and coordinate approval with COMMISSION. OFFEROR shall cooperate with monitoring agency inspections and field reviews.
- I. OFFEROR shall coordinate the implementation of any changes with the Construction Manager and the design engineer. All change orders shall be prepared using Commission's format and procedures. All change orders will be submitted to Caltrans (on the State Highway System) and the Commission for approval.
- J. OFFEROR shall review and approve falsework, shoring and other temporary work plans.
- K. OFFEROR shall review and approve Traffic Control Plans and forward to local jurisdictions for approval as necessary.
- L. OFFEROR shall coordinate all Project construction activities with other ongoing projects within and adjacent to the Project limits.

OFFEROR shall review existing highway electrical and traffic systems arrangements with County, City, Caltrans (as applicable) and arrange, through the construction Contractor, any temporary facilities required during construction.

## **5. Construction Inspection**

- A. OFFEROR shall coordinate all required inspections necessary for the Project. OFFEROR shall ensure that appropriate Caltrans, City, County and other local agencies are notified and present as required throughout the Project. OFFEROR shall notify COMMISSION immediately regarding any directives, recommendations, notices, etc. received from agencies other than COMMISSION before taking action.
- B. OFFEROR shall perform and document daily on-site inspections of the progress and quality of construction to determine if the work being performed is in general conformance with the contract documents, permits, all applicable laws, codes, and ordinances.
- C. OFFEROR shall exercise reasonable care and diligence to discover and promptly report to COMMISSION any and all defects or deficiencies in the materials or workmanship used in the Project.

- D. OFFEROR personnel assigned to the Project shall be thoroughly familiar with Caltrans Standard Specifications, Caltrans Standard Plans, and Caltrans Erosion Control and Highway Planting requirements. OFFEROR personnel shall have the ability to read and interpret construction plans and specifications. OFFEROR personnel shall also have knowledge of State of California Construction Safety Orders (CalOSHA) and traffic control practices as specified in the Work Area Traffic Control Handbook (WATCH). In addition, OFFEROR personnel shall be familiar with the construction requirements of Storm Water Pollution Prevention Program.
- E. Assignments to be performed by OFFEROR personnel shall include, but are not limited to, the following:
- 1) Earthwork inspection including source and quality of imported and/or fill material and compaction; subgrade and paving inspection including checking alignment and grade; structure work inspection including foundation construction (piling), structure element formwork, reinforcing and prestressing steel installation, concrete placement; subsurface and finish drainage system inspection; signing and striping inspections, electrical and highway traffic system inspection, landscape hardscape, soil amendment, SWPPP compliance; planting and irrigation installation inspection; fencing; temporary and permanent traffic barriers and device inspection; monitor construction traffic control, material haul routes, and detours, and any other duties that may be required to determine that construction of the Project is being performed in accordance with the contract documents.
  - 2) Identifying actual and potential problems associated with the Project and recommending sound engineering solutions.
  - 3) Arrange testing in accordance with Caltrans highway materials testing and planting procedures. Arrange for necessary corrective work, as required. Provide comprehensive materials records including materials sources, inspection & test results and documented compliance with specifications.
  - 4) Maintaining awareness of safety and health requirements. Monitoring Contractors' compliance with applicable regulations and construction contract provisions for the protection of the public and Project personnel.
  - 5) Preparing complete and accurate daily reports, calculations, project records, payment quantity documents, reports, and correspondence related to Project activities. Documents shall be sufficient to support actual cost of force account work.
  - 6) Preparing construction sketches, drawings, and cross-sections, as necessary.
  - 7) Keep records of all deviations from the approved plans to assist the Design

Engineer in the preparation of as-built plans. Provide final clearance dimensions from roadways to bridge soffits.

- 8) Providing inspections for environmental compliance. Coordinate with third-party consultants or stake holders for special monitoring or inspections and disposal of hazardous material, if required.
- 9) Maintaining awareness of water discharge requirements. Monitoring Contractors' compliance with applicable regulations and construction contract provisions.
- 10) Monitoring Contractors' compliance with applicable regulations required by AQMD.
- 11) Coordinate Contractor's lane traffic closures with Caltrans, County, City and the Sheriff including, when necessary, the provision of CHP services for COZEEP operations. Maintain records of COZEEP participation to support the Commission's payment process for the CHP.
- 12) Monitor work associated with Temporary Construction Easements and communicate with land owners through the Commission's representatives.
- 13) Other duties as may be required or reasonably requested.

## **6. Project Support Services**

### **A. Construction Surveys**

OFFEROR shall perform construction surveying services, field calculations, and home office calculations to support construction of the Project. OFFEROR may be requested to review available survey data, construction plans, and right-of-way plans to confirm compatibility and to identify discrepancies prior to and during construction of proposed projects. The survey effort shall assist the Construction Management team in all phases of construction. The Resident Engineer will assign survey work by issuing a "Request for Survey Services". Requests may include, but not be limited to, the following types of surveys and related services:

#### **1) Construction Surveys**

Survey calculations and adjustments shall be performed with established and computed coordinates based on the California Coordinate System.

Cross-section data collection shall be performed by conventional and terrain line interpolation survey methods.

Survey data will include topography, cross-section, and other survey data in computer formats compatible with the Caltrans computer survey and design



systems.

Prepare and maintain survey documents. Survey documents include survey field notes, maps, drawings, and other survey documents.

Perform construction staking, including but not limited to:

- Utility locations;
- Clearing limits;
- TCE and R/W limits;
- Slope staking;
- Rough grade;
- Finish grade;
- Storm drain, sanitary sewer, and irrigation system;
- Drainage structures;
- Curb, gutters, sidewalk;
- Horizontal and vertical control for structures and portions of structures (bents, abutments, wingwall);
- Global Positioning Satellite (GPS) equipment shall be made available if required by the COMMISSION
- Monitor foundations for settlement, if required;
- Provide measurements to support earthwork quantity calculations.

## 2) Right of Way Lines

Existing right of way will be established from Local Agency's record information and existing monumentation.

- Right of way monumentation shall be renewed and restored in accordance with Section 10.4 of the Caltrans "Survey Manual" and the State of California Land Surveyor's Act.
- Corner records and records of surveys shall be prepared and filed in accordance with the applicable standards and the State of California Land Surveyor's Act.
- Perpetuate existing monumentation. Includes restoring, renewing, referencing, and resetting existing boundary related monumentation. In addition, stake areas where construction disturbs the existing right of way, preparing and filing required maps and records.
- Right of Way Surveys. Includes research and preparation filing of required maps and records. In addition, locate and set monuments for right of way and staking for right of way fences.
- Final monumentation. Includes setting of centerline points of control upon

completion of construction.

3) Special Design – Data Surveys

Includes drainage, utility, and surveys required for special field studies.

B. Materials Testing and Geotechnical Services

OFFEROR will provide experienced personnel, equipment, and facilities to perform various construction materials sampling and testing. Material plant, Laboratory, and field materials sampling, and testing will be used to ensure, concrete, hot mix asphalt, pavement, and embankment construction work conforms to California State Department of Transportation (Caltrans) standards, specifications, and special provisions for material quality and workmanship.

All field and laboratory testing shall be performed in accordance with California Test Methods.

OFFEROR will be responsible for the accuracy and completeness of all test data compilation and results.

C. Public Outreach

It is expected that, due to the complexity and location of the Project, an innovative Public Outreach program will be required on the Project. The OFFEROR shall implement a public outreach program for the project. OFFEROR shall manage public outreach activities for the project, as directed by the COMMISSION and in coordination with local jurisdictions and Caltrans. OFFEROR will be responsible for, but not limited to, the following outreach activities:

- Develop Public Outreach Plan with measurable goals and take part in project kickoff meeting with COMMISSION and prime consultant;
- Prepare project “key messages” for consistent use throughout the project;
- Attend construction meetings, determine information of interest to the public, and recommend course of action for outreach;
- Prepare and disseminate electronic Construction Updates in both English and Spanish and provide files to COMMISSION for website postings;
- Identify and maintain database of elected officials, agencies, schools, businesses, hospitals, fire and law enforcement contacts;
- Maintain communication with local stakeholders via emails, telephone calls, and door-to-door canvassing, as directed;
- Establish and maintain a public inquiry/response protocol and maintain log and helpline;
- Respond to public inquiries/calls/emails;
- Maintain Project Crisis Communication and Emergency Plan

- Organize groundbreaking and ribbon-cutting ceremonies;
- Organize project site visits by dignitaries or key stakeholders;
- Organize public workshops or informational meetings for the project;
- Develop project fact sheet, with updates at project milestones;
- Develop content and updates for COMMISSION's website;
- Develop weekly (minimum) social media posts (Facebook, Twitter, Instagram) and provide to COMMISSION for posting; monitor comments and draft responses to comments;
- Assist in tracking of public damage claims.
- Develop short (60-second or less) monthly project update videos and provide to COMMISSION for posting; monitor comments and draft responses to comments;
- Provide photography and videography of project construction for use in public outreach materials. Include an accessible photo/ video share site or library;
- Assist in preparing community presentations about the project for COMMISSION's staff;
- Attend community meetings on behalf of the COMMISSION's staff as directed, such as staffing informational booths or providing brief comments at civic or business events;
- Provide monthly summary report of outreach activities to COMMISSION, assess progress toward goals, and recommend changes to outreach plan, as needed.

#### D. Permits

- OFFEROR shall review the project for permit compliance and coordinate with COMMISSION and the design engineer to ensure that necessary permits are obtained.
- OFFEROR shall assist COMMISSION in the coordination, timely processing and verification of approval for all permits. OFFEROR shall maintain permits and permit documentation on site..
- OFFEROR shall prepare and submit all reports required by the permits to ensure timely closeout of the permits.

#### E. Drone Services for Public Outreach / Construction Progress.

OFFEROR will provide:

- Weekly standardized video flight pattern that captures overall project area, potentially about 5 minutes of video;
- Special flight for detail up to a once a month basis as requested;
- A condensed 30 to 60 second drone video (MP4 or compatible);
- Side by side video comparisons of current drone video and preconstruction drone video at periodic milestones/ intervals;
- Still photos from video as needed;
- Video to be shown at weekly project meetings and made available per website.

F. Crawling Camera/Video Inspection Services

OFFEROR will provide:

- Crawling Camera and/or video inspection services for investigative needs of underground facilities or other inaccessible/restrictive locations.

**7. Cost and Schedule**

A. OFFEROR shall prepare and track the following:

- 1) Contract pay item quantities, materials-on-hand and progress payments
- 2) Extra work / Compensation adjustment payments
- 3) Contract change orders
- 4) Supplemental work items
- 5) Agency-furnished materials
- 6) Contingency balance
- 7) Project budget
- 8) Anticipated final cost
- 9) Proactive schedule management

B. OFFEROR shall review and monitor Contractor's schedule and inform COMMISSION of any significant changes or deviations in the schedule.

C. OFFEROR shall provide and maintain a Project staffing plan of field office personnel. In cooperation with COMMISSION, the staffing plan shall be periodically updated to reflect Project progress and needs.

**8. Contract Change Orders and Claims**

A. OFFEROR shall receive and evaluate requests for changes and/or substitutions by the Contractor. Contract Change Orders submitted to COMMISSION shall be accompanied by OFFEROR recommendations. Where applicable, OFFEROR shall convey proposed changes to design engineer, Caltrans Oversight Engineers or other project principals. If the requested changes are accepted, OFFEROR shall negotiate and prepare appropriate Contract Change Orders.

B. OFFEROR shall attempt to avoid all unnecessary Contract Change Orders. When a Contract Change Order is necessary, OFFEROR shall consult with COMMISSION prior to its preparation. Unless directed otherwise by COMMISSION, the preferred method of payment for Contract Change Orders should be as follows:

1. Agreed Price
2. Adjustment in compensation to a bid item
3. Time and materials or Force Account

- C. OFFEROR shall attempt to identify all potential claims, track and monitor unresolved claims, and implement claims avoidance processes. OFFEROR shall assist COMMISSION, as requested, in the identification, resolution, and final disposition of claims filed by the Contractor or third parties against COMMISSION or the Project.
- D. OFFEROR shall implement a bi-weekly change order meeting with COMMISSION staff and management to discuss and approach and issues of change orders.

**9. Safety**

In addition to the requirements specified elsewhere in this agreement, the following shall also apply:

- A. OFFEROR shall implement a comprehensive safety program including preparation of a project-specific Accident/Illness Prevention Plan and conduct regular tail-gate safety meetings for OFFEROR personnel. OFFEROR shall provide a monthly report of traffic and site safety incidents, accidents and issues to the COMMISSION as part of the Monthly Report.
- B. OFFEROR shall comply with State of California Construction Safety Orders and provisions of the Caltrans Construction Manual.
- C. OFFEROR shall provide appropriate safety training for all OFFEROR field personnel.
- D. OFFEROR shall provide all necessary safety equipment as required for OFFEROR personnel.
- E. OFFEROR shall conduct and document a weekly safety walk through of the site. Attendees shall include the Resident Engineer and Contractors Construction Manager/ Project Manager. OFFEROR shall extend an invitation for this meeting to the RCTC Construction Manager.
- F. OFFEROR shall establish a standard communication protocol to provide COMMISSION staff with necessary incident notification and reports and implement the communication protocol and requirement set forth in project crisis communication and emergency plan.

**10. Project Close Out**

- A. OFFEROR shall prepare a list of items to be completed and/or corrected by the Contractor for final completion of the Project.
- B. OFFEROR shall collect and furnish as-built information to the design engineer for

- preparation of as-built drawings including utility locations, electrical system element locations and system requirements, prestressing drawings and pile logs, as applicable.
- C. OFFEROR shall review and verify completeness of as-built drawings.
  - D. OFFEROR shall conduct a final walk-through with COMMISSION, Caltrans, Local Agencies, Contractors, and design engineers.
  - E. OFFEROR shall prepare final construction reports including the Project Completion Report in the format and content requirements set forth by the COMMISSION. Completion report shall include
  - F. OFFEROR shall prepare and deliver to COMMISSION all project files in electronic format.
  - G. OFFEROR shall assist COMMISSION and Contractor in obtaining final release of all project permits.
  - H. OFFEROR shall prepare and submit on behalf of COMMISSION all documents and reports required to close out the construction and environmental permits applicable to the project.

#### Deliverables.

Notwithstanding any requirement set forth in Caltrans Construction Manual, Local Assistance Procedures Manual, COMMISSION's Quality Assurance Plan, applicable Cooperative and/or Fundings Agreements, Permits' requirements, OFFEROR shall furnish as part of project administration and closeout the following documents:

#### A. Construction Records

OFFER shall use the sixty-three (63) files categories set forth in Caltrans Construction Manual, Chapter 5, "Contract Administration", to maintain all projects electronic records. The records shall include but are not limited to the following:.

- a. Inspector daily reports, extra work diaries, Landscape Architect, and Resident Engineers' daily diaries.
- b. Monthly Project Activity Summary Reports. This Monthly project activity shall include tracking of the following tasks, and shall allow COMMISSION to convert each task to full time equivalent for evaluation and analysis:

Task 01: Management and Administration

Task 02: Constructability Review

Task 03: Bid Processing

Task 04: Pile Drilling, shoring, casing, structural concrete

Task 05: Excavation and Backfill, include quantities of the earthwork and

number of tests performed

Task 06: Retaining walls

Task 07: Bridge superstructure

Task 08: Pavement, including number of test

Task 09: Labor compliance

Task 10: Environmental Monitoring

Task 11: Closeout

- c. Separate Structures and Roadway Weekly Summary Reports.
- d. Monthly Contractor progress payments, back-up documentation, and Contractor payment records.
- e. Contractor final payment documents, delivered to COMMISSION no later than ten (10) working days after acceptance by COMMISSION of the completed construction project.
- f. Final acceptance and relief of maintenance from project stakeholders.
- g. Project Completion Report.
- h. Project History File per Caltrans requirements.
- i. All project files, project reports, correspondence, memoranda, shop drawings, project logs, schedule analyses and weekly working day statements, change order data, claims and claim reports, and Contractor payment records.
- j. All material test results shall be provided in accordance with the applicable Standard Specifications and Special Provisions, and test methods. Failing tests shall be immediately reported to the Resident Engineer or Structures Representative. All test results shall be recorded on the appropriate forms. The test documents will be legible and show the identity of the tester where appropriate. A notebook containing all results will be kept. All test equipment shall be calibrated per California Test requirements and regularly verified.
- k. All construction electronic records, delivered to COMMISSION no later than ten (10) working days upon COMMISSION request or after obtaining the following, whichever occur first:
  - Final Pay Estimate due to Contractor
  - Final Change Order for Reconciliation of all Bid Items and Change Orders

## B. Survey Documents

- a. Unless otherwise specified in the survey request, the deliverables shall conform to the following:
  1. Survey points, lines, and monuments shall be established, marked, identified, and referenced as required by survey request and requirements herein.
  2. Survey notes, drawings, calculations, and other survey documents and information shall be completed as required by the survey request and the requirements herein.
- b. All original survey documents resulting from this contract, including original field notes, adjustment calculations, final results, and appropriate intermediate documents, shall be delivered to the Resident Engineer and shall become the property of COMMISSION. A copy of all survey documents furnished by COMMISSION shall be retained by CONSULTANT for future reference.
- c. When the survey is performed with a total station survey system, the original field notes shall be a hard copy in a readable format of the data (observations) as originally collected and submitted by the survey party. The hard copy shall be signed by the Party Chief. If the Party Chief is not licensed, the person in "responsible charge" will be required to sign.

Survey deliverables shall follow the format specified below:

- Horizontal Control
- Alpha numeric electronic copy point listing with adjusted California Coordinate System northing and eastings and the appropriate descriptions.
- Vertical Control
- Alpha numeric electronic copy benchmark listing with adjusted elevations compatible with the design datum.
- Topography
- Alpha numeric electronic copy listing, drawing, and computer aided drawing and design (CADD) digital drawing. The CADD drawing shall be compatible with the systems utilized by Caltrans.

Data collection method used to collect cross-section data and the coding (feature description) of terrain data for cross-sections shall conform to the survey request requirements. Deliverables shall depend on the data collection method as follows:



- Conventional Cross – Sections (each cross – section):  
For each cross - section and alpha numeric listing, a hard copy drawing, and a computer formatted file compatible with the systems utilized by Caltrans.
  - Terrain Line Interpolation Cross – Section Data (each terrain line interpolation survey):  
Terrain line interpolation cross – sections shall include an alpha numeric listing, a hard copy plan view drawing of the terrain lines, and a computer input file. The computer input file shall be provided in a format compatible with the systems utilized by Caltrans.
- d. Data Collector Data  
If specified in the survey request, the raw data from the data collector shall be provided in a format conforming to the survey request requirements
- e. Other  
As specified in the survey request.

C. Payroll Documents

- a. Certified payrolls and fringe benefit statements for all employees, OFFEROR and Contractor, who are subject to the State and/or Federal prevailing wage rates.
- b. Certified payroll documents shall be kept separately and shall not be transferred to COMMISSION with other documents.
- c. If the Contractor is not using approved labor compliance software, then OFFEROR shall coordinate with the Contractor to use electronic media to review and store the certified payroll. OFFEROR shall propose standard file name which will allow tracking each category of labor compliance documents.

**Equipment and Materials to be provided by OFFEROR**

1. OFFEROR will provide office space, telephones, desks, chairs, computers, and appropriate office equipment (making accommodation for the COMMISSION if requested).
2. OFFEROR shall provide all necessary equipment including software, materials, supplies, miscellaneous tools, and safety equipment required for its personnel to perform the services accurately, efficiently, and safely. Only those items listed in Exhibit C, "Compensation Provisions" OFFEROR Cost Proposal, shall be reimbursed by COMMISSION.
3. OFFEROR personnel shall provide vehicles for field personnel suitable for the location and nature of the work involved. Vehicles shall be equipped with flashing

yellow lights, either permanently or temporarily affixed.

4. OFFEROR personnel shall be provided with a mobile radio, cellular phone, or other means to assure full-time communication. If a radio system is used, OFFEROR shall provide a base station at the field office.
5. OFFEROR personnel shall be provided with all applicable standard plans, specifications, and other standards as appropriate.
6. For Materials Testing, OFFEROR and its staff shall be fully equipped at all times to perform the services required, including but not limited to the following:

- a. An on-site mobile laboratory or laboratory in close proximity to the project will be required. The type and location of the lab should be such that it can meet the needs of the project in an efficient, time effective manner. The laboratory shall be fully staffed, equipped, and supplied to conduct all required soils, materials, and concrete breaking tests in a timely manner.

- b. OFFEROR's personnel will be provided with radios, mobile phones, or other means to assure full-time communication. OFFEROR vehicles will have flashing lights, visible from the rear, with a driver control switch. Vans without side windows will not be used. COMMISSION furnished magnetic logos will be affixed to each side of the vehicle at all times the vehicle is being used for the work under this agreement.

Each vehicle shall be fully contained with all necessary equipment and supplies necessary to perform the field sampling and tests required.

- c. Field personnel will be provided with all necessary safety equipment to permit work to be performed safely and efficiently within operating highway and construction zone environments.

- d. All equipment to be calibrated as per Section 3-10 and 3-11 of Caltrans' Quality Assurance Program Manual.

7. For construction surveying, OFFEROR and staff shall have adequate equipment and supplies to complete the required survey work. Equipment and supplies shall, include, but not be limited to:

- a. Survey vehicles

Survey vehicles will be suitable to perform the required work in varying terrain and conditions encountered on the project. Vehicles shall be fully equipped with all necessary tools, instruments, supplies, and safety equipment required to perform the work accurately, efficiently, and safely. Vehicles shall be equipped with a flashing yellow beacon light.

b. Data Processing Systems

Data processing systems shall include hardware and software to:

- Performing survey and staking calculations from the design plans and specifications;
- Reduce survey data collected with conventional and total station survey systems;
- Perform network adjustments for horizontal and vertical control surveys;
- Format survey data to be compatible with the Caltrans computer survey and data system.

c. Drafting equipment and supplies.

d. Digital calculators.

e. Hand tools as appropriate for the requested survey work.

f. Traffic cones (minimum 25). Traffic cones shall be 28 inches in height (minimum).

g. Traffic control devices as required to perform the requested survey work. Traffic control devices include signs, sign bases, flags, and hand held signs.

h. Leveling instruments and equipment:

- Self-leveling level. Precision: standard deviation in one mile of double run leveling 0.005 feet or less.
- Suitable level rods for the work to be performed.

i. Distance measuring instruments and equipment:

- Electronic distance measurer (EDM). Precision: standard deviation 3 mm plus 3 PPM, or less; Range: Minimum one mile under average atmospheric conditions.
- Prisms, sufficient to perform the required work.
- Tapes; steel, cloth.

j. Angle measuring instruments and equipment:

- Theodolite for non-control surveys; Precision: direct circle reading to three seconds, or equivalent, horizontal and vertical.

- Targets as required to perform the work.
- k. When required for efficient survey operations, total station survey systems consisting of an electronic angle measuring instrument, EDM, and electronic data collector shall be provided. The angle measuring instruments and EDM shall conform to the requirements for the equipment previously listed.
- l. Radio or cellular communications equipment for communication between field office and field crews.
- m. Caltrans manuals, standards, forms, and other policies and procedures to be followed to perform the required work.

**Materials to be Furnished by Commission**

1. COMMISSION will provide electronic copies of all Project construction documents including plans, special provisions, reports, designer prepared resident engineer files, and contracts.
2. COMMISSION will provide electronic copies of all previously secured permits and Project authorizations.

**Standards**

All construction inspection, surveys, materials sampling and testing, and contract administration shall be in accordance with the Contract documents and current Caltrans Manuals including:

1. Construction Manual and its revisions;
2. Bridge Construction Records and Procedures Manual;
3. Quality Assurance Program Manual;
4. Manual of Traffic Controls for Construction and Maintenance Work Zones;
5. Caltrans Standard Specifications and Standard Plans;
6. Caltrans Storm Water Pollution Prevention Plan (SWPPP) and Water Pollution Control Program (WPCP) Preparation Manual;
7. Manual of Test (3 volumes);
8. Survey Manual;
9. District 8 Standard Staking Procedures Manual;

10. United States Army Corps of Engineers permit requirements.

Work not covered by the manuals shall be performed in accordance with accepted professional standards.

Surveys performed by OFFEROR shall conform to the requirements of the Land Surveyor's Act. In accordance with the Land Surveyor's Act, "responsible charge" for the work shall reside with the Licensed Land Surveyor or a pre-January 1, 1982, Registered Professional Civil Engineer in the State of California.

Unless otherwise specified in the survey request, control surveys shall conform to second order (modified) accuracy standards as specified in the Caltrans "Survey Manual".

Additional standards for specific survey work may be included in the applicable request for survey. Such standards supplement the standards specified herein. If additional standards conflict with the standards specified herein, the "Survey Request's" standard shall govern.

The Resident Engineer and COMMISSION will decide all questions which may arise as to the quality or acceptability of deliverables furnished and work performed for this agreement. Any OFFEROR employee who does not perform adequately will be replaced if directed by the COMMISSION Construction Manager.

### **Availability and Work Hours**

The typical workday includes all hours worked by COMMISSION's construction Contractor. The construction Contractor's operations may be restricted to specific hours during the week, which will become the normal workday for OFFEROR's personnel. On days when work is not performed by the construction contractor, such as rainy or unsuitable weather days, OFFEROR services will not be provided unless authorized by the COMMISSION Construction Manager.

Unless otherwise directed by COMMISSION, the normal work week will consist of 40 hours. From time to time, overtime may be required. However, overtime will be worked only when approved in writing by COMMISSION.

### **Limitations to Authority**

OFFEROR does not have the authority to:

1. Authorize deviations from the contract documents.
2. Approve substitute materials or equipment; except as authorized in writing by COMMISSION.

3. Conduct or participate in tests or third party inspections; except as authorized in writing by COMMISSION.
4. Assume any of the responsibilities of the Contractors, Contractors' Superintendent, or subcontractors.
5. Exercise control over or be responsible for construction means, methods, techniques, sequences, procedures, or safety precautions.
6. Communicate directly with subcontractors or material suppliers without the prior consent of the Contractor.
7. Verbally authorize or approve change orders or extra work for the Project.
8. Offer or receive incentives, inducements, or other forms of enumeration to or from the Contractor to perform services or work outside the terms of any executed contracts for this Project.

### **Third Party Relationships**

This Agreement is intended to provide unique services for a specific project. In the development of the Project, COMMISSION has worked closely with various agencies and others in the preparation of the construction documents and other Project related materials. COMMISSION, however, is solely responsible for and will be the sole point of contact for all contractual matters related to the Project. OFFEROR shall take direction **only** from COMMISSION and shall regularly inform **only** COMMISSION of Project progress, outstanding issues, and all Project related matters.

During the course of the Project, OFFEROR may find occasion to meet with City representatives, the design engineer, Project Consultants, or other third parties who have assisted with the Project. These entities may, from time to time, offer suggestions and/or recommendations regarding the Project or elements of the Project. While COMMISSION enjoys a close relationship with and has considerable confidence in the capabilities of these other parties, OFFEROR shall not act on any suggestions, solicited or unsolicited, without obtaining specific direction from COMMISSION. All oral and written communication with outside agencies or Consultants related to the project shall be directed only to COMMISSION. Distribution of Project related communication and information shall be at the sole discretion of COMMISSION representatives.

### **Construction Site Safety**

In addition to the requirements specified elsewhere in this agreement, the following also will apply:

1. OFFEROR will conform to the safety provisions of the Caltrans Construction Manual.
2. OFFEROR's field personnel will wear white hard hats with proper suspension, orange vests with reflective tape, sleeved shirt, long pants, and leather boots with ankle support and rubber soles at all times while working in the field.

3. OFFEROR will provide appropriate safety training for all OFFEROR's personnel.
4. All safety equipment will be provided by OFFEROR.

### **Basis for Survey and Monument Staking**

COMMISSION will designate the existing horizontal and vertical control monuments that are the basis of OFFEROR performed surveys. COMMISSION will provide the California Coordinate System values and/or elevation values for these monuments. OFFEROR shall adjust OFFEROR performed surveys to be the designated control monuments and the values.

Monuments established by OFFEROR shall be marked by OFFEROR with furnished disks, plugs, tags. In addition, OFFEROR shall identify OFFEROR established monuments by tagging or stamping the monuments with the license or registration number of OFFEROR'S surveyor who is in "responsible charge" of the work.

### **Personnel Qualifications and Responsibilities**

The quantity and qualifications of field personnel to be assigned will be determined by the scope of the Project and the degree of difficulty of required tasks to be performed. All personnel and personnel assignments shall be subject to approval by COMMISSION.

**EXHIBIT “B”**

**SCHEDULE OF SERVICES**

**[attached behind this page]**

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**EXHIBIT "C"**  
**COMPENSATION PROVISIONS**

**[attached behind this page]**

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**EXHIBIT "C"**  
**COMPENSATION SUMMARY<sup>1</sup>**

FIRM	PROJECT TASKS/ROLE	COST
<b><i>Prime Consultant:</i></b>		
Jacobs Project Management Co.	Construction Management Services	\$ 6,552,688.93
<b><i>Sub Consultants:</i></b>		
RT Engineering & Associates, Inc.	Landscape Inspection	350,143.90
Meadows Consulting	Labor Compliance	210,769.68
Arellano Associates, LLC	Public Outreach	360,718.47
CL Surveying and Mapping, Inc.	Construction Surveying	637,475.98
G3 Quality, Inc.	Materials Testing	332,683.23
ZT Consulting Group, Inc.	Quality Assurance Source Inspection	167,919.81
<b>TOTAL COSTS</b>		<b>\$ 8,612,400.00</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.

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**EXHIBIT "D"**

**FEDERAL DEPARTMENT OF TRANSPORTATION  
FHWA AND CALTRANS REQUIREMENTS**

**[attached behind this page]**

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## EXHIBIT "D"

### FEDERAL DEPARTMENT OF TRANSPORTATION FHWA AND CALTRANS REQUIREMENTS

#### 1. STATEMENT OF COMPLIANCE.

A. Consultant's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

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

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

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

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

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

## **2. FHWA TITLE VI ASSURANCES.**

A. Compliance with Regulations: Consultant shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

B. Nondiscrimination: Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

C. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

D. Information and Reports: Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts Consultant has made to obtain the information.

E. Sanctions for Noncompliance: In the event of Consultant's noncompliance with the nondiscrimination provisions of this agreement, the Commission shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: i. withholding of payments to Consultant under the Agreement within a reasonable period of time, not to exceed 90 days; and/or ii. cancellation, termination or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: Consultant shall include the provisions of paragraphs (A) through (F) in every sub-agreement, including procurements of materials and leases of

equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any sub-agreement or procurement as the Commission or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, Consultant may request Commission enter into such litigation to protect the interests of the State, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

### **3. ADDITIONAL NONDISCRIMINATION REQUIREMENTS**

During the performance of this Agreement, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees to comply with the following nondiscrimination statutes and authorities, including, but not limited to: Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with

disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

#### **4. DEBARMENT AND SUSPENSION CERTIFICATION**

A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to COMMISSION.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

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

#### **5. DISCRIMINATION**

The Commission shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the implementation of the Caltrans DBE program or the requirements of 49 CFR Part 26. The Commission shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

Consultant or subcontractor shall not discriminate on the basis of race, color, national origin, of sex in the performance of this Agreement. Consultant or subcontractor shall carry out applicable requirements of 49 CFR Part 26 and the Caltrans DBE program in

the award and administration of DOT-assisted contracts, as further set forth below. Failure by the Consultant or subcontractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the Commission deems appropriate.

## **6. PROMPT PAYMENT**

A. Consultant agrees to pay each subconsultant under this Agreement for satisfactory performance of its contract no later than 15 days from the receipt of each payment the Consultant receives from the Commission. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Commission. This clause applies to both DBE and non-DBE subcontractors.

B. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Consultant to a subconsultant, Consultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the Consultant to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

C. The above provisions apply to Consultant's subconsultants who retain subconsultants.

D. **PROMPT PAYMENT CERTIFICATION** For projects awarded on or after September 1, 2023: the Consultant shall submit Caltrans Exhibit 9-P (available at <https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms> and incorporated herein by reference) to the Commission by the 15th of the month following the month of any payment(s). If the Consultant does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P. The submitted forms shall be reviewed by the Commission and submitted to Caltrans.

## **7. RELEASE OF RETAINAGE**

No retainage will be held by the Commission from progress payments due to Consultant. Consultant and subconsultants are prohibited from holding retainage from subconsultants. Any delay or postponement of payment may take place only for good cause and with the Commission's prior written approval. Any violation of these provisions shall subject the violating Consultant or subconsultant to the penalties,



sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by Consultant, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

## **8. LEGAL REMEDIES**

In addition to those contract remedies set forth under relevant provisions of California law, either Party to this Agreement may, where applicable, seek legal redress for violations of this Agreement pursuant to the relevant provisions of 49 C.F.R. Parts 23 and 26, to the relevant federal or state statutory provisions governing civil rights violations, and to the relevant federal and state provisions governing false claims or “whistleblower” actions, as well as any and all other applicable federal and state provisions of law.

The Consultant shall include a provision to this effect in each of its agreements with its subcontractors.

## **9. DBE PARTICIPATION**

A. Consultant or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, the Commission has included a contract goal for DBEs under this Agreement. Consultant shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

Consultant shall meet the DBE goal shown in this exhibit, or demonstrate that it made adequate Good Faith Efforts (GFE) to meet this goal. It is Consultant’s responsibility to verify all DBE firms included in its proposal are certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes and work code applicable to the type of work the firm will perform under this Agreement. Additionally, the Consultant is responsible to document the verification record by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

All DBE participation will count toward the California Department of Transportation’s federally mandated statewide overall DBE goal. Credit for materials or supplies Consultant purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.

- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.

- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

This Agreement is subject to 49 CFR 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs".

Consultants who enter into a federally-funded agreement will assist the Commission in a good faith effort to achieve California's statewide overall DBE goal. Any subcontract entered into as a result of this Agreement shall contain all of the DBE provisions in this Exhibit "D".

## **10. DBE GOAL**

The goal for DBE participation for this Agreement is \_\_\_\_\_%. Participation by DBE Consultant or subconsultants shall be in accordance with information contained in Exhibit 10- O2: Consultant Contract DBE Commitment attached hereto and incorporated as part of this Agreement. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

A. Consultant can meet the DBE participation goal by either documenting commitments to DBEs to meet the Agreement goal, or by documenting adequate good faith efforts to meet the Agreement goal. An adequate good faith effort means that the Consultant must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If Consultant has not met the DBE goal, Consultant must complete and submit Exhibit 15-H: Proposer/Contractor Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

## **11. CONTRACT ASSURANCE; REMEDIES**

A. Contract Assurance. Under 49 CFR 26.13(b):

Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

B. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Commission appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying Consultant from future proposing as non-responsible

## **12. TERMINATION AND REPLACEMENT OF DBE SUBCONSULTANTS**

Consultant shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless Consultant or DBE subconsultant obtains the Commission's written consent. Consultant shall not terminate or replace a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the Commission. Unless the Commission's consent is provided, the Consultant shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02: Consultant Contract DBE Commitment form.

A. Termination of DBE Subconsultants. After execution of this Agreement, termination of a DBE may be allowed for the following, but not limited to, justifiable reasons with prior written authorization from the Commission:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The Commission stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the Commission's bond requirements.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent or exhibits credit unworthiness.
8. Listed DBE voluntarily withdraws with written notice from this Agreement.
9. Listed DBE is ineligible to receive credit for the type of work required.

10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on under this Agreement.

11. The Commission determines other documented good cause.

B. Consultant must use the following procedures to request the termination of a DBE or portion of a DBE's work:

1. Send a written notice to the DBE of the Consultant's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to the Commission. The written notice to the DBE must request they provide any response within five (5) business days to both the Consultant and the Commission by either acknowledging their agreement or documenting their reasoning as to why the use of other forces or sources of materials should not occur.

2. If the DBE does not respond within five (5) business days, Consultant may move forward with the request as if the DBE had agreed to Consultant's written notice.

3. Submit Consultant's DBE termination request by written letter to the Commission and include:

- One or more above listed justifiable reasons along with supporting documentation.
- Consultant's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of Consultant's written notice
- The DBE's response to Consultant's written notice, if received. If a written response was not provided, provide a statement to that effect.

The Commission shall endeavor to respond in writing to Consultant's DBE termination request within five (5) business days.

C. Replacement of DBE Subconsultants. After receiving the Commission's written authorization of DBE termination request, Consultant must obtain the Commission's written agreement for DBE replacement. Consultant must find or demonstrate GFEs to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment.

The following procedures shall be followed to request authorization to replace a DBE firm:

1. Submit a request to replace a DBE with other forces or material sources in writing to the Commission which must include:

a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.

b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:

- Description of scope of work and cost proposal
- Proposed subcontract agreement and written confirmation of agreement to perform under this Agreement.
- Revised Exhibit 10-O2: Consultant Contract DBE Commitment.

2. If Consultant has not identified a DBE replacement firm, submits documentation of Consultant's GFEs to use DBE replacement firms within seven (7) days of Commission's authorization to terminate the DBE. Consultant may request the Commission's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:

- Search results of certified DBEs available to perform the original DBE work identified and or other work Consultant had intended to self-perform, to the extent needed to meet DBE commitment
- Solicitations of DBEs for performance of work identified
- Correspondence with interested DBEs that may have included contract details and requirements
- Negotiation efforts with DBEs that reflect why an agreement was not reached
- If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive
- Copies of each DBE's and non-DBE's price quotes for work identified, as the Commission may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
- Additional documentation that supports Consultant's GFE

The Commission shall endeavor to respond in writing to Consultant's DBE replacement request within five (5) business days.

### **13. DBE COMMITMENT AND UTILIZATION**

The Commission's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization. The Commission shall request Consultant to:

1. Notify the Commission's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
  - Name and business address of each 1st-tier subconsultant
  - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
  - Date of payment and total amount paid to each business (see Exhibit 9-F: Monthly Disadvantaged Business Enterprise Payment)

If Consultant is a DBE Consultant, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify Consultant in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify Consultant in writing of the certification date. Consultant shall submit the notifications to the Commission. On work completion, Consultant shall complete Exhibit 17-O: Disadvantaged Business Enterprises (DBE) Certification Status Change and submit the form to the Commission within 30 days of contract acceptance.

Upon work completion, CONSULTANT shall complete Exhibit 17-F: Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the Commission within 90 days of contract acceptance. The Commission will withhold \$10,000 until the form is submitted. The Commission will release the withheld funds upon submission of the completed form.

In the Commission's reports of DBE participation to Caltrans, the Commission must display both commitments and attainments.

### **14. COMMERCIALY USEFUL FUNCTION - DBEs**

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a CUF when it is responsible for execution of the work of the Agreement

and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself.

Consultant must perform CUF evaluation for each DBE working on a federal-aid contract, with or without a DBE goal. Perform a CUF evaluation at the beginning of the DBE's work and continue to monitor the performance of CUF for the duration of the Project.

Consultant must provide written notification to the Commission at least 15 days in advance of each DBE's initial performance of work or supplying materials for this Agreement. The notification must include the DBE's name, work the DBE will perform on the contract, and the location, date, and time of where their work will take place.

Within 10 days of a DBE initially performing work or supplying materials on the Contract, Consultant shall submit to the LPA the initial evaluation and validation of DBE performance of a CUF using the LAPM 9-J: Disadvantaged Business Enterprise Commercially Useful Function Evaluation (available online at <https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>) and incorporated herein by reference). Include the following information with the submittal:

- Subcontract agreement with the DBE
- Purchase orders
- Bills of lading
- Invoices
- Proof of payment

Consultant must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout their duration of work on the Contract using the LAPM 9-J: DBE Commercially Useful Function Evaluation (available online at <https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>) and incorporated herein by reference. Consultant must submit to the Commission these quarterly evaluations and validations by the 5th of the month for the previous three months of work.

Consultant must notify the Commission immediately if they believe the DBE may not be performing a CUF. The Commission will verify DBEs performance of CUF by reviewing the initial and quarterly submissions of LAPM 9-J: DBE Commercially Useful Function Evaluation, submitted supporting information, field observations, and through any

additional Commission evaluations. The Commission must evaluate DBEs and their CUF performance throughout the duration of this Agreement. The Commission will provide written notice to the Consultant and the DBE at least two (2) business days prior to any evaluation. The Consultant and the DBE must participate in the evaluation. Upon completing the evaluation, the Commission must share the evaluation results with the Consultant and the DBE. An evaluation could include items that must be remedied upon receipt. If the Commission determines the DBE is not performing a CUF, the Consultant must suspend performance of the noncompliant work.

Consultant and DBEs must submit any additional CUF related records and documents within five (5) business days of Commission's request such as:

- Proof of ownership or lease and rental agreements for equipment
- Tax records
- Employee rosters
- Certified payroll records
- Inventory rosters

Failure to submit required DBE Commercially Useful Function Evaluation forms or requested records and documents can result in withholding of payment for the value of work completed by the DBE.

If Consultant and/or the Commission determine that a listed DBE is not performing a CUF in performance of their DBE committed work, Consultant must immediately suspend performance of the noncompliant portion of the work. The Commission may deny payment for the noncompliant portion of the work. The Commission will ask the Consultant to submit a corrective action plan (CAP) to the Commission within five (5) days of the noncompliant CUF determination. The CAP must identify how the Consultant will correct the noncompliance findings for the remaining portion of the DBE's work. The Commission has five (5) days to review the CAP in conjunction with the Consultant's review. The Consultant must implement the CAP within five (5) days of the Commission's approval. The Commission will then authorize the prior noncompliant portion of work for the DBE's committed work.

If corrective actions cannot be accomplished to ensure the DBE performs a commercially useful function under the Agreement, Consultant may have good cause to request termination of the DBE.

A. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra



participant, examine similar transactions, particularly those in which DBEs do not participate.

B. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

## **15. RECORDS OF PAYMENTS TO DBEs**

A. Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier.

The records shall show the date of payment and the total dollar figure paid to all firms. DBE Consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

B. By the 15th of the month following the month of any payment(s), the Consultant must submit Exhibit 9-P to the Commission. If the Consultant does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

## **16. DEBARMENT, SUSPENSION AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION**

In accordance with 49 CFR Part 29, which by this reference is incorporated herein, Consultant's subconsultants completed and submitted the Certificate of subconsultant Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion as part of the Consultant's proposal. If it is later determined that Consultant's subconsultants knowingly rendered an erroneous Certificate, the Commission may, among other remedies, terminate this Agreement.

## **17. ENVIRONMENTAL COMPLIANCE**

A. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

B. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

## **18. NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

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

## **19. PROHIBITION OF CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE EQUIPMENT AND SERVICES**

Consultant shall not obligate or expend any funds to be reimbursed under this Agreement to:

- Procure or obtain;
  - Extend or renew a contract to procure or obtain; or
  - Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The prohibited vendors (and their subsidiaries or affiliates) are:
    - Huawei Technologies Company;
    - ZTE Corporation;
    - Hytera Communications Corporation;
    - Hangzhou Hikvision Digital Technology Company;
    - Dahua Technology Company; and
    - Subsidiaries or affiliates of the above-mentioned companies.
- and customers is sustained.

**EXHIBIT "E"**

**CONSULTANT DBE COMMITMENT**

**[attached behind this page]**

DRAFT



**EXHIBIT “F”**

**DISCLOSURE OF LOBBYING ACTIVITIES**

**[attached behind this page]**

DRAFT

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

<p><b>1. Type of Federal Action:</b></p> <p><input type="checkbox"/> a. contract  <input type="checkbox"/> b. grant  <input type="checkbox"/> c. cooperative agreement  <input type="checkbox"/> d. loan  <input type="checkbox"/> e. loan guarantee  <input type="checkbox"/> f. loan insurance</p>	<p><b>2. Status of Federal Action:</b></p> <p><input type="checkbox"/> a. bid/offer/application  <input type="checkbox"/> b. initial award  <input type="checkbox"/> c. post-award</p>	<p><b>3. Report Type:</b></p> <p><input type="checkbox"/> a. initial  <input type="checkbox"/> b. material change</p> <p style="text-align: right;"><b>For Material Change Only:</b>  year ____ quarter ____  date of last report _____</p>
<p><b>4. Name and Address of Reporting Entity</b></p> <p><input type="checkbox"/> Prime                      <input type="checkbox"/> Subawardee  Tier _____, if known</p> <p style="text-align: center;"><b>Congressional District, if known</b></p>	<p><b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b></p> <p style="text-align: center;"><b>Congressional District, if known</b></p>	
<p><b>6. Federal Department/Agency:</b></p>	<p><b>7. Federal Program Name/Description:</b></p> <p style="text-align: right;"><b>CFDA Number, if applicable</b> _____</p>	
<p><b>8. Federal Action Number, if known:</b></p>	<p><b>9. Award Amount, if known:</b></p>	
<p><b>10. Name and Address of Lobby Entity</b>  (If individual, last name, first name, MI)</p> <p style="text-align: center;">(attach Continuation Sheet(s) if necessary)</p>	<p><b>11. Individuals Performing Services</b> (including address if different from No. 10a)  (last name, first name, MI)</p>	
<p><b>12. Amount of Payment (check all that apply)</b></p> <p>\$ _____ <input type="checkbox"/> actual    <input type="checkbox"/> planned</p>	<p><b>14. Type of Payment (check all that apply)</b></p> <p><input type="checkbox"/> a. retainer  <input type="checkbox"/> b. one-time fee  <input type="checkbox"/> c. commission  <input type="checkbox"/> d. contingent fee  <input type="checkbox"/> e. deferred  <input type="checkbox"/> f. other, specify _____</p>	
<p><b>13. Form of Payment (check all that apply):</b></p> <p><input type="checkbox"/> a. cash  <input type="checkbox"/> b. in-kind; specify: nature _____  Value _____</p>		
<p><b>15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:</b></p> <p style="text-align: center;">(attach Continuation Sheet(s) if necessary)</p>		
<p><b>16. Continuation Sheet(s) attached:</b>      Yes <input type="checkbox"/>      No <input type="checkbox"/></p>		
<p><b>17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b></p>		
		<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p>
		<p>Authorized for Local Reproduction  Standard Form - LLL</p>

Standard Form LLL Rev. 04-28-06

## INSTRUCTIONS FOR COMPLETING DISCLOSURE OF LOBBYING ACTIVITIES EXHIBIT

This disclosure form shall be submitted with the Consultant's proposal, and whenever there is a material change to previous filing pursuant to title 31 U.S.C. Section 1352. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

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

**EXHIBIT G**

**EXECUTIVE ORDER N-6-22 CERTIFICATION**

Executive Order N-6-22 issued by Governor Gavin Newsom on March 4, 2022, directs all agencies and departments that are subject to the Governor’s authority to (a) terminate any contracts with any individuals or entities that are determined to be a target of economic sanctions against Russia and Russian entities and individuals; and (b) refrain from entering into any new contracts with such individuals or entities while the aforementioned sanctions are in effect.

Executive Order N-6-22 also requires that any contractor that: (1) currently has a contract with the Riverside County Transportation Commission (“Commission”) funded through grant funds provided by the State of California; and/or (2) submits a bid or proposal or otherwise proposes to or enter into or renew a contract with the Commission with State of California grant funds, certify that the person is not the target of any economic sanctions against Russia and Russian entities and individuals.

The Consultant hereby certifies, SUBJECT TO PENALTY FOR PERJURY, that a) the Consultant is not a target of any economic sanctions against Russian and Russian entities and individuals as discussed in Executive Order N-6-22 and b) the person signing below is duly authorized to legally bind the Consultant. This certification is made under the laws of the State of California.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Date: \_\_\_\_\_



DRAFT Agreement No. 08-1787  
Project No.: 0800020445  
EA: 08-34142  
08-RIV-060-28.03/30.42

## **COOPERATIVE AGREEMENT COVER SHEET**

### Work Description

THE SR-60/POTRERO BLVD INTERCHANGE PHASE 2 PROJECT IS LOCATED IN THE CITY OF BEAUMONT AT THE WESTERN END OF THE SAN GORGONIO PASS AREA OF RIVERSIDE COUNTY ON SR-60, BETWEEN JACK RABBIT TRAIL AND THE SR-60/I-10 JUNCTION. THE PROJECT RECEIVED ED APPROVAL ON MARCH 1, 2013. PHASE 2 WILL RESUME COMPLETION OF THE REMAINDER OF THE PROJECT WHICH INCLUDES THE CONSTRUCTION OF THE FOLLOWING PROPOSED IMPROVEMENTS; WIDENING POTRERO BLVD TO 6 LANES, 2 DIAGONAL ON-RAMPS, 2 LOOP ON-RAMPS, 2 DIAGONAL OFF-RAMPS, REALIGNMENT OF WESTERN KNOLLS AVE, AND AUXILIARY LANES ON SR-60.

### Contact Information

The information provided below indicates the primary contact information for each PARTY to this AGREEMENT. PARTIES will notify each other in writing of any personnel or location changes. Contact information changes do not require an amendment to this AGREEMENT.

#### CALTRANS

Michael Makary, Project Manager

464 West 4th Street

San Bernardino, CA 92401

Office Phone: (909) 501-1258

Email: michael.makary@dot.ca.gov

#### RIVERSIDE COUNTY TRANSPORTATION COMMISSION

David Lewis, Capital Projects Manager

4080 Lemon Street, 3rd Floor.

Riverside, CA 92501

Office Phone: (951) 787-7970

Mobile Phone: (951) 212-6936

Email: dlewis@rctc.org

Agreement No. 08-1787 | 08-RIV-060 | EA: 08-34142

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## **COOPERATIVE AGREEMENT**

This AGREEMENT, executed on and effective from \_\_\_\_\_, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

Riverside County Transportation Commission, a public corporation/entity, referred to hereinafter as RCTC.

An individual signatory agency in this AGREEMENT is referred to as a PARTY. Collectively, the signatory agencies in this AGREEMENT are referred to as PARTIES.

### **RECITALS**

1. PARTIES are authorized to enter into a cooperative agreement for improvements to the State Highway System (SHS) per the California Streets and Highways Code, Sections 114 and 130.
2. *The SR-60/Potrero Blvd Interchange Phase 2 project is located in the City of Beaumont at the western end of the San Gorgonio Pass area of Riverside County on SR-60, between Jack Rabbit Trail and the SR-60/I-10 junction. The project received ED approval on March 1, 2013. Phase 2 will resume completion of the remainder of the project which includes the construction of the following proposed improvements: 2 diagonal on-ramps, 2 loop on-ramps, 2 diagonal off-ramps, realignment of Western Knolls Ave, and auxiliary lanes on SR-60, and will be referred to hereinafter as PROJECT. The PROJECT scope of work is defined in the project initiation and approval documents (e.g. Project Study Report, Design Engineering Evaluation Report, or Project Report).*
3. All obligations and responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENT will be referred to hereinafter as WORK:

- CONSTRUCTION

Each PROJECT COMPONENT is defined in the CALTRANS Workplan Standards Guide as a distinct group of activities/products in the project planning and development process.

4. The term AGREEMENT, as used herein, includes this document and any attachments, exhibits, and amendments.

This AGREEMENT is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding between the PARTIES regarding the PROJECT.

PARTIES intend this AGREEMENT to be their final expression that supersedes any oral understanding or writings pertaining to the WORK. The requirements of this AGREEMENT will preside over any conflicting requirements in any documents that are made an express part of this AGREEMENT.

If any provisions in this AGREEMENT are found by a court of competent jurisdiction to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other AGREEMENT provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this AGREEMENT.

Except as otherwise provided in the AGREEMENT, PARTIES will execute a written amendment if there are any changes to the terms of this AGREEMENT.

PARTIES agree to sign a CLOSURE STATEMENT to terminate this AGREEMENT. However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, maintenance and ownership articles will remain in effect until terminated or modified in writing by mutual agreement or expire by the statute of limitations.

5. The following work associated with this PROJECT has been completed or is in progress:
  - CALTRANS completed the Project Initiation Document (PID) on November 29, 1995.
  - CALTRANS approved the Categorical Exemption (CE) on March 1, 2013.
  - CALTRANS approved the Environmental Impact Statement (EIS) on March 1, 2013.
  - CALTRANS completed the Plans, Specifications, and Estimate (PS&E) (Cooperative Agreement No. 08-1334).
  - CALTRANS completed the Project Report on March 1, 2013.
  - CALTRANS completed construction of Phase I in 2022 (Construction Cooperative Agreement No. 08-1525).
  - RCTC is developing the Plans, Specifications, and Estimate (PS&E) for Phase II on behalf of the City of Beaumont (CITY) pursuant to Agreement No. 24-72-064-00 entered into on March 27, 2024, between RCTC and CITY (RCTC-CITY Cooperative Agreement). RCTC will complete the WORK on behalf of CITY pursuant to an amendment to the RCTC-CITY Cooperative Agreement, pursuant to which the CITY will provide funding to RCTC in order for RCTC to meet its obligations as the SPONSOR under this AGREEMENT.
  - Any understanding between CITY and RCTC should be an agreement between those parties in a separate agreement.
6. In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.
7. PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT.

## **RESPONSIBILITIES**

### Sponsorship

8. A SPONSOR is responsible for establishing the scope of the PROJECT and securing the financial resources to fund the WORK. A SPONSOR is responsible for securing additional funds when

necessary or implementing PROJECT changes to ensure the WORK can be completed with the funds committed in this AGREEMENT.

PROJECT changes, as described in the CALTRANS Project Development Procedures Manual, will be approved by CALTRANS as the owner/operator of the State Highway System.

9. RCTC is the SPONSOR for the WORK in this AGREEMENT.

#### Implementing Agency

10. The IMPLEMENTING AGENCY is the PARTY responsible for managing the scope, cost, schedule, and quality of the work activities and products of a PROJECT COMPONENT.
  - RCTC is the CONSTRUCTION IMPLEMENTING AGENCY.

CONSTRUCTION includes construction contract administration, surveying/staking, inspection, quality assurance, and assuring regulatory compliance. The CONSTRUCTION component budget identifies the capital costs of the construction contract/furnished materials (CONSTRUCTION CAPITAL) and the cost of the staff work in support of the construction contract administration (CONSTRUCTION SUPPORT).
11. RCTC will provide a Quality Management Plan (QMP) for the WORK in every PROJECT COMPONENT that they are implementing. The QMP describes the IMPLEMENTING AGENCY's quality policy and how it will be used. The QMP will include a process for resolving disputes between the PARTIES at the team level. The QMP is subject to CALTRANS review and concurrence.
12. Any PARTY responsible for completing WORK will make its personnel and consultants that prepare WORK available to help resolve WORK-related problems and changes for the entire duration of the PROJECT including PROJECT work that may occur under separate agreements.

#### Funding

13. Funding sources, PARTIES committing funds, funding amounts, and invoicing/payment details are documented in the Funding Summary section of this AGREEMENT.
14. PARTIES will not be reimbursed for costs beyond the funding commitments in this AGREEMENT.
15. Upon California Transportation Commission (CTC) approval, funding reimbursement to PARTY will be non-proportional with Trade Corridors Enhancement Program (TCEP) reimbursed first (at 100%) and LOCAL TUMF to be spent thereafter.

16. Unless otherwise documented in the Funding Summary, overall liability for project costs within a PROJECT COMPONENT, subject to program limitations, will be in proportion to the amount contributed to that PROJECT COMPONENT by each fund type
17. Unless otherwise documented in the Funding Summary, any savings recognized within a PROJECT COMPONENT will be credited or reimbursed, when allowed by policy or law, in proportion to the amount contributed to that PROJECT COMPONENT by each fund type
18. WORK costs, except those that are specifically excluded in this AGREEMENT, are to be paid from the funds obligated in the Funding Summary. Costs that are specifically excluded from the funds obligated in this AGREEMENT are to be paid by the PARTY incurring the costs from funds that are independent of this AGREEMENT.

#### CALTRANS' Quality Management

19. CALTRANS, as the owner/operator of the State Highway System (SHS), will perform quality management work including Quality Management Assessment (QMA) and owner/operator approvals for the portions of WORK within the existing and proposed SHS right-of-way.
20. CALTRANS' Quality Management Assessment (QMA) efforts are to ensure that RCTC's quality assurance results in WORK that is in accordance with the applicable standards and the PROJECT's quality management plan (QMP). QMA does not include any efforts necessary to develop or deliver WORK or any validation by verifying or rechecking WORK.  
  
When CALTRANS performs QMA, it does so for its own benefit. No one can assign liability to CALTRANS due to its QMA.
21. CALTRANS, as the owner/operator of the State Highway System, will approve WORK products in accordance with CALTRANS policies and guidance and as indicated in this AGREEMENT.
22. RCTC will provide WORK-related products and supporting documentation upon CALTRANS' request for the purpose of CALTRANS' quality management work.

#### CEQA/NEPA Lead Agency

23. CALTRANS is the CEQA Lead Agency for the PROJECT.
24. CALTRANS is the NEPA Lead Agency for the PROJECT.

#### Environmental Permits, Approvals and Agreements



25. PARTIES will comply with the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each PARTY's responsibilities in this AGREEMENT.
26. Unless otherwise assigned in this AGREEMENT, the IMPLEMENTING AGENCY for a PROJECT COMPONENT is responsible for all PROJECT COMPONENT WORK associated with coordinating, obtaining, implementing, renewing, and amending the PROJECT permits, agreements, and approvals whether they are identified in the planned project scope of work or become necessary in the course of completing the PROJECT.
27. The PROJECT requires the following environmental permits/approvals:

ENVIRONMENTAL PERMITS/REQUIREMENTS
404 US Army Corps of Engineers
401 Regional Water Quality Control Board
State Waste Discharge Requirements (Porter Cologne)/Regional Water Quality Control Board
1602 California Department of Fish & Wildlife Agreement Amendment

CONSTRUCTION

28. As the CONSTRUCTION IMPLEMENTING AGENCY, RCTC is responsible for all CONSTRUCTION WORK except those activities and responsibilities that are assigned to another PARTY and those activities that are excluded under this AGREEMENT.
29. CALTRANS will be responsible for completing the following CONSTRUCTION SUPPORT activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	AGREEMENT Funded Cost
100.20.10.xx Quality Management	NO

30. 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.
31. Right-of-way conveyances must be completed prior to WORK completion, unless PARTIES mutually agree to other arrangements in writing.

32. RCTC will include a Disadvantaged Business Enterprise (DBE) utilization goal in the PROJECT construction contract(s) in accordance with the *Local Assistance Procedures Manual*. RCTC will award the construction contract to the lowest responsive bidder who makes a Good Faith Effort to meet the DBE goal.
33. CALTRANS will not issue an encroachment permit to RCTC for construction work until the following conditions are met:
- CALTRANS accepts the final plans, specifications, and estimate
  - CALTRANS accepts the Right-of-Way Certification
  - Any new or amended maintenance agreements required for the WORK are executed.
  - Any new or amended Freeway Agreements required for the WORK are executed.
34. RCTC will require the construction contractor to furnish payment and performance bonds naming RCTC as obligee, and CALTRANS as additional obligee, and to carry liability insurance in accordance with CALTRANS Standard Specifications.
35. RCTC will advertise, open bids, award, and approve the construction contract in accordance with the California Public Contract Code and the California Labor Code. By accepting responsibility to advertise and award the construction contract, RCTC also accepts responsibility to administer the construction contract.
36. If the lowest responsible construction contract bid is greater than the funding commitment to CONSTRUCTION CAPITAL, PARTIES must agree in writing on a course of action within fifteen (15) working days. If no agreement is reached within fifteen (15) working days, the IMPLEMENTING AGENCY will not award the construction contract.
37. CALTRANS will not issue an encroachment permit to RCTC's construction contractor until CALTRANS accepts:
- The payment and performance bonds
  - The CONSTRUCTION Quality Management Plan
38. The CONSTRUCTION Quality Management Plan (QMP) will describe how construction material verification and workmanship inspections will be performed at manufacturing sources and the PROJECT job-site. The construction material and Source Inspection QMP (SIQMP) are subject to review and approval by the State Materials Engineer.
39. The CONSTRUCTION Quality Management Plan will address the radiation safety requirements of the California Code of Regulations 17 CCR § 30346 when the work requires Gamma-Gamma Logging acceptance testing for Cast in Drilled Hole (CIDH) pile or whenever else it is applicable. In accordance with these regulations, RCTC, as the "well operator", will have a written agreement with any consultant or external entity performing these tests.
40. RCTC will provide a Resident Engineer and CONSTRUCTION SUPPORT staff that are independent of the construction contractor. The Resident Engineer will be a Civil Engineer,

- licensed in the State of California, who is responsible for construction contract administration activities.
41. RCTC will provide a landscape architect who will be responsible for all landscaping activities within the State Highway System.
42. CALTRANS will review and concur with:
- Change Orders affecting public safety, public convenience, protected environmental resources, the preservation of property, all design and specification changes, and all major changes as defined in the CALTRANS Construction Manual. These Change Orders must receive written concurrence by CALTRANS prior to implementation.
  - The Stormwater Pollution Prevention Plan (SWPPP) or the Water Pollution Control Plan (WPCP).
43. RCTC will administer and process all construction contract claims pursuant to the requirements set forth under Public Contract Code, Section 9204. In addition, all public works claims of \$375,000 or less shall be resolved in accordance with Public Contract Code Section 20104, et seq. and other applicable laws.
44. RCTC is designated as the Legally Responsible Person pursuant to the Construction General Permit, State Water Resources Control Board (SWRCB) Order Number 2009-0009-DWQ, as defined in Appendix 5, Glossary, and assumes all roles and responsibilities assigned to the Legally Responsible Person as mandated by the Construction General Permit. RCTC is required to comply with the CALTRANS MS4 National Pollutant Discharge Elimination System (NPDES) permit for all work within the State Highway System.
45. RCTC will submit a written request to CALTRANS for any Department Furnished Materials (DFM) identified in the PROJECT plans, specifications, and estimate a minimum of sixty (60) working days prior to the construction start of work. RCTC will submit a written request to CALTRANS for any additional DFM deemed necessary during the PROJECT construction.
- CALTRANS will make the DFM available at a CALTRANS-designated location.
46. As the CONSTRUCTION IMPLEMENTING AGENCY, RCTC is responsible for maintenance of the State Highway System (SHS) within the PROJECT limits as part of the construction contract until the following conditions are met:
- Any required maintenance agreements are executed for the portions of SHS for which relief of maintenance is to be granted.
  - CALTRANS approves a request from RCTC for relief from maintenance of the PROJECT or a portion thereof.
47. RCTC will ensure all necessary maintenance agreements will be executed and/or amended between the local agency with land-use jurisdiction and CALTRANS.

48. Upon WORK completion, ownership or title to all materials and equipment constructed or installed for the operations and/or maintenance of the State Highway System (SHS) within SHS right-of-way as part of WORK become the property of CALTRANS.

CALTRANS will not accept ownership or title to any materials or equipment constructed or installed outside SHS right-of-way.

49. Within one hundred eighty (180) calendar days following the completion and acceptance of the PROJECT construction contract, RCTC will furnish CALTRANS with a complete set of "As-Built" plans and Change Orders, including any changes authorized by CALTRANS, using an approved transfer mechanism, such as a CD ROM, flash drive, Filr. The submitted digital files must be completed in accordance with Caltrans specifications, policies, and manuals, including requirements in Sections 2 and 3, of Chapter 17 in the Project Development Procedures Manual, then current CADD User's Manual (Section 4.3), Plans Preparation Manual, and CALTRANS practice. The plans will have the Resident Engineer's name, contract number, and construction contract acceptance date printed on each plan sheet, and with the Resident Engineer's signature only on the title sheet. The As-Built plans will be in MicroStation DGN format, version 8.0. When applicable, the digital submittal must also include high accuracy locating and underground facilities data. In addition, RCTC will provide one set of As-Built plans and addenda in TIFF format.

The submittal must also include all CALTRANS requested contract records, and land survey documents. The land survey documents include monument preservation documents and records of surveys prepared to satisfy the requirements of the California Professional Land Surveyors' Act (Business and Professions Code, Sections 8700 – 8805). Copies of survey documents and Records of Surveys filed in accordance with Business & Professions Code, Sections 8762 and 8771, will contain the filing information provided by the county in which filed.

#### Schedule

50. PARTIES will manage the WORK schedule to ensure the timely use of committed funds and to ensure compliance with any environmental permits, right-of-way agreements, construction contracts, and any other commitments. PARTIES will communicate schedule risks or changes as soon as they are identified and will actively manage and mitigate schedule risks.
51. The IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTIES with a final report of the WORK completed.

#### Additional Provisions

##### Standards

52. PARTIES will perform all WORK in accordance with federal and California laws, regulations, and standards; Federal Highway Administration (FHWA) standards; and CALTRANS standards. CALTRANS standards include, but are not limited to, the guidance provided in the:

- CADD User's Manual
- CALTRANS policies and directives
- Plans Preparation Manual
- Project Development Procedures Manual (PDPM)
- Workplan Standards Guide
- Construction Manual
- Encroachment Permits Manual
- Construction Manual Supplement for Local Agency Resident Engineers
- Local Agency Structure Representative Guidelines

#### Noncompliant Work

53. CALTRANS retains the right to reject noncompliant WORK. RCTC agrees to suspend WORK upon request by CALTRANS for the purpose of protecting public safety, preserving property rights, and ensuring that all WORK is in the best interest of the State Highway System.

#### Qualifications

54. Each PARTY will ensure that personnel participating in WORK are appropriately qualified or licensed to perform the tasks assigned to them.

#### Consultant Selection

55. RCTC will invite CALTRANS to participate in the selection of any consultants that participate in the WORK.

#### Encroachment Permits

56. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within State Highway System (SHS) right-of-way. RCTC, their contractors, consultants, agents, and utility owners will not work within the SHS right-of-way without an encroachment permit issued by CALTRANS. CALTRANS will provide encroachment permits to RCTC at no cost. CALTRANS will provide encroachment permits to utility owners at no cost. If the encroachment permit and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.
57. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will coordinate, prepare, obtain, implement, renew, and amend any encroachment permits needed to complete the WORK.

#### Protected Resources

58. If any PARTY discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTY will notify all PARTIES within 24 hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and CALTRANS approves a plan for its removal or protection.

#### Disclosures

59. PARTIES will hold all administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for the WORK in confidence to the extent permitted by law and where applicable, the provisions of California Government Code, Section 7921.505(c)(5) will protect the confidentiality of such documents in the event that said documents are shared between PARTIES.

PARTIES will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete the WORK without the written consent of the PARTY authorized to release them, unless required or authorized to do so by law.

60. If a PARTY receives a public records request pertaining to the WORK, that PARTY will notify PARTIES within five (5) working days of receipt and make PARTIES aware of any disclosed public records.

Hazardous Materials

61. HM-1 is hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law, whether it is disturbed by the PROJECT or not.

HM-2 is hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by the PROJECT.

The management activities related to HM-1 and HM-2, including and without limitation, any necessary manifest requirements and disposal facility designations are referred to herein as HM-1 MANAGEMENT and HM-2 MANAGEMENT respectively.

62. If HM-1 or HM-2 is found, the discovering PARTY will immediately notify all other PARTIES.
63. CALTRANS, independent of the PROJECT, is responsible for any HM-1 found within the existing State Highway System right-of-way. CALTRANS will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the PROJECT schedule.

CALTRANS will pay, or cause to be paid, the cost of HM-1 MANAGEMENT for HM-1 found within the existing State Highway System right-of-way with funds that are independent of the funds committed in this AGREEMENT.

64. If HM-1 is found within the PROJECT limits and outside the existing State Highway System right-of-way, responsibility for such HM-1 rests with the owner(s) of the parcel(s) on which the HM-1 is found. RCTC, in concert with the local agency having land use jurisdiction, will ensure that HM-1 MANAGEMENT is undertaken with minimum impact to PROJECT schedule.

The cost of HM-1 MANAGEMENT for HM-1 found within the PROJECT limits and outside the existing State Highway System right-of-way will be paid from funds that are independent of the

funds committed in this AGREEMENT and will be the responsibility of the owner(s) of the parcel(s) where the HM-1 is located.

65. The CONSTRUCTION IMPLEMENTING AGENCY is responsible for HM-2 MANAGEMENT within the PROJECT limits.

RCTC and CALTRANS will comply with the Soil Management Agreement for Aerially Deposited Lead Contaminated Soils (Soil Management Agreement) executed between CALTRANS and the California Department of Toxic Substances Control (DTSC). Under Section 3.2 of the Soil Management Agreement, CALTRANS and RCTC each retain joint and severable liability for noncompliance with the provisions of the Soil Management Agreement. RCTC will assume all responsibilities assigned to CALTRANS in the Soil Management Agreement during PROJECT COMPONENTS for which they are the IMPLEMENTING AGENCY except for final placement and burial of soil within the State right-of-way, per Section 4.5 of the Soil Management Agreement, which is subject to CALTRANS concurrence and reporting to DTSC which will be performed by CALTRANS.

66. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.

#### Claims

67. Any PARTY that is responsible for completing WORK may accept, reject, compromise, settle, or litigate claims arising from the WORK without concurrence from the other PARTY.
68. PARTIES will confer on any claim that may affect the WORK or PARTIES' liability or responsibility under this AGREEMENT in order to retain resolution possibilities for potential future claims. No PARTY will prejudice the rights of another PARTY until after PARTIES confer on the claim.
69. If the WORK expends state or federal funds, each PARTY will comply with the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards of 2 CFR, Part 200. PARTIES will ensure that any for-profit consultant hired to participate in the WORK will comply with the requirements in 48 CFR, Chapter 1, Part 31. When state or federal funds are expended on the WORK these principles and requirements apply to all funding types included in this AGREEMENT.

#### Accounting and Audits

70. PARTIES will maintain and will ensure that any consultant hired by PARTIES to participate in WORK will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred PROJECT costs and billings.
71. PARTIES will maintain and make available to each other all WORK-related documents, including financial data, during the term of this AGREEMENT.

PARTIES will retain all WORK-related records for three (3) years after the final voucher.

PARTIES will require that any consultants hired to participate in the WORK will comply with this Article.

72. PARTIES have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the State Auditor, FHWA (if the PROJECT utilizes federal funds), and RCTC will have access to all WORK-related records of each PARTY, and any consultant hired by a PARTY to participate in WORK, for audit, examination, excerpt, or transcription.

The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation. The auditing PARTY will be permitted to make copies of any WORK-related records needed for the audit.

The audited PARTY will review the draft audit, findings, and recommendations, and provide written comments within thirty (30) calendar days of receipt.

Upon completion of the final audit, PARTIES have forty-five (45) calendar days to refund or invoice as necessary in order to satisfy the obligation of the audit.

Any audit dispute not resolved by PARTIES is subject to mediation. Mediation will follow the process described in the General Conditions section of this AGREEMENT.

73. If the WORK expends state or federal funds, each PARTY will undergo an annual audit in accordance with the Single Audit Act in the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as defined in 2 CFR, Part 200.

74. When a PARTY reimburses a consultant for WORK with state or federal funds, the procurement of the consultant and the consultant overhead costs will be in accordance with the Local Assistance Procedures Manual, Chapter 10.

#### Interruption of Work

75. If WORK stops for any reason, IMPLEMENTING AGENCY will place the PROJECT right-of-way in a safe and operable condition acceptable to CALTRANS.
76. If WORK stops for any reason, each PARTY will continue with environmental commitments included in the environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, and will keep the PROJECT in environmental compliance until WORK resumes.

#### Penalties, Judgments and Settlements

77. The cost of awards, judgments, fines, interest, penalties, attorney's fees, and/or settlements generated by the WORK are considered WORK costs.



78. The cost of legal challenges to the environmental process or documentation are considered WORK costs.
79. Any PARTY whose action or lack of action causes the levy of fines, interest, or penalties will indemnify and hold all other PARTIES harmless per the terms of this AGREEMENT.

Project Files

80. RCTC will furnish CALTRANS with the Project History Files related to the PROJECT facilities on State Highway System within sixty (60) days following the completion of each PROJECT COMPONENT. RCTC will assure that the Project History File is prepared and submitted in compliance with the Project Development Procedures Manual, Chapter 7. All material will be submitted neatly in a three-ring binder and in PDF format.

Environmental Compliance

81. If during performance of WORK additional activities or environmental documentation is necessary to keep the PROJECT in environmental compliance, PARTIES will amend this AGREEMENT to include completion of those additional tasks.

Road Repair and Accountability Act of 2017 (SB 1)

82. As the IMPLEMENTING AGENCY, RCTC will prepare and submit to CALTRANS a Completion Report, in accordance with California Transportation Commission (CTC) SB1 Accountability and Transparency Guidelines.

RCTC must submit a Completion Report for the construction component to CALTRANS for approval within four (4) months of Construction Contract Acceptance or when the project becomes operable, whichever is sooner. Thereafter, CALTRANS will have two (2) months to review and approve the report prior to submission to the CTC. The Completion Report should not be delayed due to claims, plant establishment periods, ongoing environmental mitigation monitoring, or other reasons.

RCTC must submit a Final Delivery Report to CALTRANS for approval within four (4) months of conclusion of all remaining project activities beyond the acceptance of the construction contract. Thereafter, CALTRANS will have two (2) months to review and approve the report prior to submission to the CTC. The Final Delivery Report will reflect final project expenditures, any changes that occurred after submittal of the Completion Report, and an updated evaluation of the benefits.

83. In those instances where PARTIES have signed a PROJECT scope, cost, and schedule and benefit baseline data agreement (BASELINE AGREEMENT), PARTIES agree to abide by the terms and conditions of that PROJECT BASELINE AGREEMENT. The PROJECT BASELINE AGREEMENT is attached to and made a part of this AGREEMENT, by reference.

84. Notwithstanding anything to the contrary in this AGREEMENT, PARTIES are not permitted to make changes to the scope, cost, schedule or benefits of the PROJECT, unless approved by CTC.
85. PARTIES will meet the requirements of The Road Repair and Accountability Act of 2017 (SB 1), Chapter 5, Statutes of 2017, California Transportation Commission (CTC) SB1 Accountability and Transparency Guidelines, and the CTC's Trade Corridor Enhancement Program (TCEP) guidelines.

PARTIES agree that contributed funds originating from the TCEP can be expended on any item identified in the PROJECT phase that is funded with TCEP. In the event of a cost overrun, CALTRANS shall contribute an amount not exceeding what is proportional to their original TCEP funding contribution. This original TCEP funding contribution is identified in the Project Programming Request (PPR), which was submitted with PROJECT BASELINE AGREEMENT.

### **GENERAL CONDITIONS**

86. All portions of this AGREEMENT, including the RECITALS section, are enforceable.

#### **Venue**

87. PARTIES understand that this AGREEMENT is in accordance with and governed by the Constitution and laws of the State of California. This AGREEMENT will be enforceable in the State of California. Any PARTY initiating legal action arising from this AGREEMENT will file and maintain that legal action in the Superior Court of the county in which the CALTRANS district office that is signatory to this AGREEMENT resides, or in the Superior Court of the county in which the PROJECT is physically located.

#### **Exemptions**

88. All CALTRANS' obligations and commitments under this AGREEMENT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, programming and allocation of funds by the California Transportation Commission (CTC).

#### **Indemnification**

89. Neither CALTRANS nor any of its officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by RCTC, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon RCTC under this AGREEMENT. It is understood and agreed that RCTC, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by RCTC, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

90. Neither RCTC nor any of its officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this AGREEMENT. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless RCTC and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

#### Non-parties

91. PARTIES do not intend this AGREEMENT to create a third- party beneficiary or define duties, obligations, or rights for entities in PARTIES not signatory to this AGREEMENT. PARTIES do not intend this AGREEMENT to affect their legal liability by imposing any standard of care for fulfilling the WORK different from the standards imposed by law.
92. PARTIES will not assign or attempt to assign obligations to entities not signatory to this AGREEMENT without an amendment to this AGREEMENT.

#### Ambiguity and Performance

93. Neither PARTY will interpret any ambiguity contained in this AGREEMENT against the other PARTY. PARTIES waive the provisions of California Civil Code, Section 1654.
- A waiver of a PARTY's performance under this AGREEMENT will not constitute a continuous waiver of any other provision.
94. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.

#### Defaults

95. If any PARTY defaults in its performance of the WORK, a non-defaulting PARTY will request in writing that the default be remedied within thirty (30) calendar days. If the defaulting PARTY fails to do so, the non-defaulting PARTY may initiate dispute resolution.

#### Dispute Resolution

96. PARTIES will first attempt to resolve AGREEMENT disputes at the PROJECT team level as described in the Quality Management Plan. If they cannot resolve the dispute themselves, the CALTRANS District Director and the Executive Officer of RCTC will attempt to negotiate a resolution. If PARTIES do not reach a resolution, PARTIES' legal counsel will initiate mediation. PARTIES agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTIES from full and timely performance of the WORK in accordance with the terms of this AGREEMENT. However, if any PARTY stops fulfilling its obligations, any other PARTY may seek equitable relief to ensure that the WORK continues.

Except for equitable relief, no PARTY may file a civil complaint until after mediation, or forty-five (45) calendar days after filing the written mediation request, whichever occurs first.

PARTIES will file any civil complaints in the Superior Court of the county in which the CALTRANS District Office signatory to this AGREEMENT resides or in the Superior Court of the county in which the PROJECT is physically located.

97. PARTIES maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.

#### Prevailing Wage

98. When WORK falls within the Labor Code § 1720(a)(1) definition of "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code § 1771, PARTIES will conform to the provisions of Labor Code §§ 1720-1815, and all applicable provisions of California Code of Regulations, Title 8, Division 1, Chapter 8, Subchapter 3, Articles 1-7. PARTIES will include prevailing wage requirements in contracts for public work and require contractors to include the same prevailing wage requirements in all subcontracts.

Work performed by a PARTY's own employees is exempt from the Labor Code's Prevailing Wage requirements.

If WORK is paid for, in whole or part, with federal funds and is of the type of work subject to federal prevailing wage requirements, PARTIES will conform to the provisions of the Davis-Bacon and Related Acts, 40 U.S.C. §§ 3141-3148.

When applicable, PARTIES will include federal prevailing wage requirements in contracts for public works. WORK performed by a PARTY's employees is exempt from federal prevailing wage requirements.

**FUNDING SUMMARY**

FUNDING TABLE					
IMPLEMENTING AGENCY:			RCTC		
Source	Party	Fund Type	CONST. SUPPORT	CONST. CAPITAL	Totals
STATE	RCTC	TCEP*	0	\$33,500,000	\$33,500,000
LOCAL	RCTC	TUMF Zone	0	\$6,850,000	\$6,850,000
LOCAL	RCTC	TUMF Regional Arterial	0	\$8,000,000	\$8,000,000
LOCAL	CITY	CIP General Fund	\$10,113,000	0	\$10,113,000
LOCAL	CITY	CIP Fund Balance/DIF-R&B	0	\$3,000,000	\$3,000,000
Totals			\$10,113,000	\$51,350,000	\$61,463,000

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SPENDING TABLE						
Fund Type	CONST. SUPPORT		CONST. CAPITAL			Totals
	CALTRANS	RCTC	CALTRANS	RCTC	DFM	
TCEP*	0	0	0	33,500,000	0	33,500,000
TUMF Zone	0	0	0	\$6,679,000	171,000	6,850,000
CIP General Fund	0	10,113,000	0			10,113,000
TUMF Regional Arterial	0	0	0	8,000,000		8,000,000
CIP Fund Balance/DIF-R&B				\$3,000,000		3,000,000
Totals	0	10,113,000	0	51,179,000	171,000	61,463,000

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### Funding

99. If there are insufficient funds available in this AGREEMENT to place the PROJECT right-of-way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY will fund these activities until such time as PARTIES amend this AGREEMENT.

That IMPLEMENTING AGENCY may request reimbursement for these costs during the amendment process.

100. If there are insufficient funds in this AGREEMENT to implement the obligations and responsibilities of this AGREEMENT, including the applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, each PARTY accepts responsibility to fund their respective WORK until such time as PARTIES amend this AGREEMENT.

Each PARTY may request reimbursement for these costs during the amendment process.

101. The cost of any engineering support performed by CALTRANS includes all direct and applicable indirect costs. CALTRANS calculates indirect costs based solely on the type of funds used to pay support costs. State and federal funds administered by CALTRANS are subject to the current Program Functional Rate. All other funds are subject to the current Program Functional Rate and the current Administration Rate. The Program Functional Rate and Administration Rate are adjusted periodically.

102. In accordance with California law, the Administration Rate is capped at 10 percent for Self-Help Counties with a countywide sales tax measure dedicated to transportation improvements. If the WORK is funded with state or federal funds, any PARTY seeking CALTRANS reimbursement of indirect costs must submit an indirect cost rate proposal and central service cost allocation plan (if any) in accordance with Local Assistance Procedures Manual, 2 CFR, Part 200 and Chapter 5. These documents are to be submitted annually to CALTRANS' Audits and Investigations for review and acceptance prior to CALTRANS' reimbursement of indirect costs.

103. Travel, per diem, and third-party contract reimbursements for WORK are to be paid from the funds in this AGREEMENT only after the contractor performs the work and incurs said costs.

Payments for travel and per diem will not exceed the rates paid rank and file state employees under current California Department of Human Resources (CalHR) rules current at the effective date of this AGREEMENT.

If RCTC invoices for rates in excess of CalHR rates, RCTC will fund the cost difference and reimburse CALTRANS for any overpayment.

104. In accordance with the CALTRANS Federal-Aid Project Funding Guidelines, PARTIES must obtain approval from the Federal Highway Administration prior to any PROJECT funding changes that that will change the federal share of funds

105. Notwithstanding the terms of this AGREEMENT, PARTIES agree to abide by funding guidelines for all contributed funds that are programmed and allocated by the CTC.

Invoicing and Payment

106. PARTIES will invoice for funds where the SPENDING TABLE shows that one PARTY provides funds for use by another PARTY. PARTIES will pay invoices within forty-five (45) calendar days of receipt of invoice when not paying with Electronic Funds Transfer (EFT).
107. When a PARTY is reimbursed for actual cost, invoices will be submitted each month for the prior month's expenditures. After all PROJECT COMPONENT WORK is complete, PARTIES will submit a final accounting of all PROJECT COMPONENT costs. Based on the final accounting, PARTIES will invoice or refund as necessary to satisfy the financial commitments of this AGREEMENT.
108. If an executed Program Supplement Agreement (PSA) or STIP Planning, Programming, and Monitoring Program Fund Transfer Agreement (PPM) exists for this PROJECT then RCTC will abide by the billing and payment conditions detailed for the fund types identified in the PSA or PPM.
109. If CALTRANS reimburses RCTC for any costs later determined to be unallowable, RCTC will reimburse those funds.

Construction Support

110. No invoicing or reimbursement will occur for the CONSTRUCTION SUPPORT PROJECT COMPONENT.

Construction Capital

111. RCTC will invoice and CALTRANS will reimburse for actual costs incurred and paid. Department Furnished Materials (DFM).
112. CALTRANS will invoice and RCTC will reimburse for actual costs incurred and paid.



**SIGNATURES**

PARTIES are authorized to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and hereby covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT. By signing below, the PARTIES each expressly agree to execute this AGREEMENT electronically.

The PARTIES acknowledge that executed copies of this AGREEMENT may be exchanged by facsimile or email, and that such copies shall be deemed to be effective as originals.

**STATE OF CALIFORNIA  
DEPARTMENT OF  
TRANSPORTATION**

**RIVERSIDE COUNTY  
TRANSPORTATION  
COMMISSION**  
**NOT FOR SIGNATURES AT THIS TIME**

---

Catalino A. Pining III  
District Director

---

Aaron Hake  
Executive Director

**Verification of Funds and Authority:**

**Attest:**

---

Corina Harriman  
District Budget Manager

---

name TBD

**Certified as to financial terms and policies:**

---

Darwin Salmos  
HQ Accounting Supervisor

---

name TBD

---

HQ Legal Representative  
HQ Legal Rep Title

DRAFT

**Agreement No. 24-72-064-01**

**AMENDMENT NO. 1 TO  
COOPERATIVE AGREEMENT  
BETWEEN  
RIVERSIDE COUNTY TRANSPORTATION COMMISSION AND THE  
CITY OF BEAUMONT  
FOR THE SR-60/POTRERO BOULEVARD INTERCHANGE PHASE II PROJECT**

Parties and Date. This Amendment No. 1 is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2025 (“Effective Date”), by and between the Riverside County Transportation Commission (“RCTC”) and the City of Beaumont (“City”). RCTC and the City are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

Recitals.

A. The City and RCTC have entered into an agreement entitled “Cooperative Agreement Between Riverside County Transportation Commission and the City of Beaumont for the SR-60 Potrero Boulevard Interchange Phase II Plans, Specifications & Estimate and Right of Way Phases” dated March 27, 2024 (the “Master Agreement”).

B. The Master Agreement provides the terms and conditions, general scope, and estimated cost for the SR-60 Potrero Boulevard Interchange Phase II (“Project”) PS&E and ROW Phases, as those terms are defined in the Master Agreement.

C. The Parties now desire, pursuant to this Amendment No. 1, to amend the Master Agreement to include the terms and conditions related to the funding and completion of the Project Construction phase of work (“CONS Phase”).

D. Funding for the CONS Phase will be from the following funding sources: Transportation Uniform Mitigation Fee (TUMF) Program funds distributed by the Western Riverside Council of Governments (“WRCOG”), Trade Corridor Enhancement Program (“TCEP”) funds distributed by the California Department of Transportation (“Caltrans”) and City local funds.

E. The Parties intend to enter into a three-party agreement with WRCOG pursuant to which RCTC will invoice WRCOG directly for the City’s share of TUMF funds allocated to the CONS Phase, and WRCOG will reimburse RCTC directly with such funds (“Three Party TUMF Agreement”).

F. The City recognizes that RCTC is entering into a Caltrans Cooperative Agreement that identifies RCTC as the “SPONSOR” for the CONS Phase. As the “SPONSOR”, RCTC is responsible for securing financial resources to fund the CONS Phase work, securing additional funds when necessary or implementing Project changes to ensure the CONS Phase work can be completed within the funds committed under the Caltrans Cooperative Agreement. The City recognizes that RCTC is entering into the Caltrans Cooperative Agreement for the benefit of the City in order to complete the

Project.

## Terms

1. The title of the Master Agreement shall be amended to read as follows: “Cooperative Agreement Between Riverside County Transportation Commission and the City of Beaumont for the SR-60 Potrero Boulevard Interchange Phase II Project.” The revised title is reflected in the title and signature page to this Amendment No. 1.
2. Sections 3.1 through 3.5 of the Master Agreement shall be amended, in their entirety, and replaced with the following.

### 3.1 Estimated Cost of Project.

A. Estimated Cost of PS&E and ROW Phases. The Parties estimate that the total cost for the PS&E and ROW Phases to be incurred by RCTC, including, but not limited to, RCTC staff and consultant project management costs, ROW acquisition costs, legal services, outreach costs, and other direct costs (but excluding the PS&E Consultant costs, which are not covered under this Cooperative Agreement) shall be Five Million, Seven Hundred Six Thousand Dollars (\$5,706,000) (“Estimated PS&E and ROW Phase Costs”). The Estimated PS&E and ROW Phase Costs are further detailed in Exhibit A attached to this Cooperative Agreement and incorporated herein by reference.

B. Estimated Cost of CONS Phase. The Parties estimate that the total cost for the CONS Phase to be incurred by RCTC, including, but not limited to, RCTC staff and consultant project management costs, construction management services consultant costs, construction contractor costs, outreach costs, and other direct costs shall be Sixty-Eight Million, One Hundred Thirteen Thousand Dollars (\$68,113,000) (“Estimated CONS Phase Costs”). The Estimated CONS Phase Costs are further detailed in Exhibit A-1 attached to this Cooperative Agreement and incorporated herein by reference.

### 3.2 PS&E and ROW Phases of Work; CONS Phase of Work.

A. RCTC shall be the lead agency for the PS&E and ROW Phases, and for the CONS Phase. All costs and expenses incurred by RCTC for the PS&E and ROW Phases and for the CONS Phase shall be reimbursed by the City using local funding sources, or such other funding sources available to the City. The Parties agree that RCTC

shall not have any obligation to fund the PS&E or ROW Phases or the CONS Phase using its own funds. In the case that funds in addition to the funding amount specified in Section 3.1 above are needed to complete the PS&E and ROW Phases or the CONS Phase, the City shall be responsible for identifying and obtaining such additional funding. Allocation of additional funding shall be by amendment to this Cooperative Agreement or by separate agreement.

B. RCTC shall manage the PS&E Consultant and shall complete such other work and services required for the PS&E and ROW Phases within the term of this Cooperative Agreement, as provided in Section 3.3, unless extended by mutual agreement of the Parties.

C. RCTC shall procure and manage the construction management consultant and construction contractor ("Contractor") contracts, and complete such other work and services required for the CONS Phase within the term of this Cooperative Agreement, as provided in Section 3.3, unless extended by mutual agreement of the Parties.

The CONS Phase work may include, but is not limited to, bidding, advertising and awarding of the construction contract; construction costs, including the cost of approved change orders; construction management, field inspection, plant establishment period, and material testing, preparation of as-built plans, record of survey, and project close-out costs.

3.3 Term of Agreement. The term of this Cooperative Agreement shall extend from the Effective Date and shall remain in effect through December 31, 2030, or until written agreement by the Parties that the PS&E and ROW Phases and the CONS Phase have been completed, unless earlier terminated as provided in this Cooperative Agreement.

3.4 Cooperation. RCTC and the City agree to cooperate in the development of the PS&E and ROW documents and the CONS bid and contract documents and other CONS related documents required for Project, completion of the PS&E and ROW Phases and CONS Phase, and the implementation of this Cooperative Agreement.

3.5 Reporting. RCTC shall, in a timely manner, provide milestone reports to the City, detailing the progress of the PS&E and ROW Phases and the CONS Phase.

3. Section 3.6 of the Agreement, Obligations of the City, shall be revised to include the following provisions.

- I. The City may provide a City oversight engineer or other City staff to oversee any CONS Phase work or services at its own cost.
- J. The City shall process any City encroachment permits required for the CONS Phases at no cost to RCTC or its consultant(s) or Contractor provided that RCTC or the consultant(s)/Contractor, as the case may be, submits a complete application for such encroachment permits consistent with City's requirements. The determination on whether the application is complete and whether an encroachment permit may be issued shall be made by the City in its sole and absolute discretion pursuant to its municipal code, policies, procedures, and any other applicable law.
- K. The CITY shall inspect the CONS Phase work upon written notice of completion of the work by RCTC to the City, and shall timely provide approval or identify any punch list items, in writing, identified by the City within thirty (30) days, or such other reasonable period requested by RCTC.
- L. The City shall work cooperatively and shall provide prompt responses and assistance to RCTC to ensure the timely completion of the CONS Phase.

4. Section 3.7 of the Agreement, Obligations of RCTC, shall be revised to include the following provisions.

- H. RCTC shall serve as the lead agency for the CONS Phase. RCTC shall be responsible for obligating state or federal funds, to the extent applicable; procuring, retaining and overseeing the construction management consultant and Contractor, and any other contracts required for completion of the CONS Phase.
- I. RCTC shall review and pay consultant and Contractor invoices for the CONS Phase and submit approved invoices to the City for reimbursement.
- J. RCTC shall notify the City upon Project completion and provide the City a reasonable period to inspect and approve the CONS Phase work, or to identify any punch list items.

- K. RCTC shall invoice the City for CONS Phase expenses to be funded with City local funds, incurred in accordance with this Cooperative Agreement, no less frequently than quarterly in any quarter in which reimbursable expenses are incurred, but not to exceed once per month. Invoices submitted to the City shall be in a form and include such detail as reasonably requested by the City.
- L. RCTC shall invoice WRCOG directly for CONS Phase expenses to be funded with TUMF Zone funds, incurred in accordance with this Cooperative Agreement and the Three Party TUMF Agreement. RCTC shall submit invoices to WRCOG at the frequency specified in the Three Party TUMF Agreement, in a form and with such detail as required by WRCOG. RCTC shall provide copies of such invoices to the City.
- M. RCTC shall invoice Caltrans directly for CONS Phase expenses to be funded with TCEP funds, incurred in accordance with this Cooperative Agreement and the Caltrans Cooperative Agreement. RCTC shall submit invoices to Caltrans at the frequency specified in the Caltrans Cooperative Agreement, in a form and with such detail as required by Caltrans. RCTC shall provide copies of such invoices to the City.

5. The City shall hold RCTC harmless from any liability incurred by RCTC in its role as the SPONSOR under the Caltrans Cooperative Agreement; shall secure additional funding for the CONS Phase, if required; or shall agree to Project changes to ensure the CONS Phase work can be completed within the Caltrans Cooperative Agreement funding amount.

6. The Cooperative Agreement shall be amended to include a new Exhibit "A-1", which exhibit includes a Funding Summary for the CONS Phase estimate.

7. This Amendment No. 1 may be signed in counterparts, each of which shall constitute an original. Facsimile signatures, including signatures transmitted by electronic mail, shall have the same force and effect as original signatures.

8. This Amendment No. 1 shall be governed by the laws of the State of California. Venue shall be in Riverside County.

9. Except as amended by this Amendment No. 1, all provisions of the Agreement, 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. 1.

[Signatures on following page]

DRAFT



**SIGNATURE PAGE  
TO  
AMENDMENT NO. 1 TO  
COOPERATIVE AGREEMENT FOR  
SR-60/POTRERO BOULEVARD INTERCHANGE PROJECT**

**IN WITNESS WHEREOF**, the parties hereto have executed this Cooperative Agreement as of the Effective Date.

**RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION**

**CITY OF BEAUMONT**

By: \_\_\_\_\_  
Aaron Hake, Executive Director

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

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Best Best & Krieger LLP  
Counsel to RCTC

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

**ATTEST:**

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

**EXHIBIT "A-1"**  
**CONS SCOPE of WORK**  
**FUNDING SUMMARY**

The estimated cost of the CONS Phase (which shall include construction management and construction contracts) for the Project, as further detailed below, is set forth in the Funding Summary below.

**THE SR-60/POTRERO BLVD INTERCHANGE PHASE 2 PROJECT IS LOCATED IN THE CITY OF BEAUMONT AT THE WESTERN END OF THE SAN GORGONIO PASS AREA OF RIVERSIDE COUNTY ON SR-60, BETWEEN JACK RABBIT TRAIL AND THE SR-60/I-10 JUNCTION. THE PROJECT RECEIVED ED APPROVAL ON MARCH 1, 2013. PHASE 2 WILL RESUME COMPLETION OF THE REMAINDER OF THE PROJECT WHICH INCLUDES THE CONSTRUCTION OF THE FOLLOWING PROPOSED IMPROVEMENTS; WIDENING POTRERO BLVD TO 6 LANES, 2 DIAGONAL ON-RAMPS, 2 LOOP ON-RAMPS, 2 DIAGONAL OFF-RAMPS, REALIGNMENT OF WESTERN KNOLLS AVE, AND AUXILIARY LANES ON SR-60.**

**FUNDING SUMMARY**

<b>FUNDING TABLE</b>					
<b>IMPLEMENTING AGENCY:</b>			<b>RCTC</b>		
<b>Source</b>	<b>Party</b>	<b>Fund Type</b>	<b>CONST. SUPPORT</b>	<b>CONST. CAPITAL</b>	<b>Totals</b>
FEDERAL	RCTC	TCEP	0	\$33,500,000	\$33,500,000
LOCAL	WRCOG	Local TUMF Zone	0	\$13,500,000	\$13,500,000
LOCAL	RCTC	Local TUMF Regional Arterial	0	\$8,000,000	\$8,000,000
LOCAL	CITY	CIP General Fund	\$10,113,000	0	\$10,113,000
LOCAL	CITY	CIP Fund Balance/DIF-R&B	0	\$3,000,000	\$3,000,000
<b>Totals</b>			<b>\$10,113,000</b>	<b>\$58,000,000</b>	<b>\$68,113,000</b>

Agreement No. 25-72-066-00

**COOPERATIVE AGREEMENT  
BETWEEN**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION,  
CITY OF BEAUMONT, AND WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

**FOR THE CONSTRUCTION OF THE POTRERO BOULEVARD INTERCHANGE  
PHASE 2 AT STATE ROUTE 60**

1. Parties and Date. This Cooperative Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2025 (“Effective Date”), by and between the Riverside County Transportation Commission (“RCTC”), City of Beaumont (“Beaumont”), and Western Riverside Council of Governments (“WRCOG”). RCTC, Beaumont, and WRCOG may collectively be referred to as the “Parties.”

2. Recitals.

2.1 WRCOG has allocated \$13,500,000 of TUMF Zone Program Funds for the construction of Phase 2 of the Potrero Boulevard Interchange at State Route 60 (Project).

2.2 WRCOG and Beaumont have entered into funding agreements allocating said \$13,500,000 for the construction of the Project.

2.3 The Project is located adjacent to and within the jurisdictional boundaries of the City of Beaumont.

2.4 Beaumont has requested that RCTC be the lead agency for the construction phase of the Project.

2.5 RCTC has agreed to act as the lead agency for the construction phase for the Project.

2.6 The purpose of this Agreement is to identify the Project and to set forth the terms and conditions pursuant to which WRCOG will release TUMF Zone Program Funds for the Project and to outline the administration roles and responsibilities for each of the Parties.

3. Terms.

3.1 Construction of State Route 60 / Potrero Boulevard Interchange Phase 2. RCTC shall construct the Project solely using funds allocated by WRCOG. RCTC shall be the lead agency for the construction of the Project. The Parties agree that RCTC shall not have any obligation to fund the construction of the Project using its own funds. In the case that additional funds are needed to complete the construction phase, Beaumont

shall be obligated to identify such additional sources of funding for construction needed beyond the funding described in Section 2.2. Such additional funding shall be added to this Agreement by an amendment. RCTC shall complete construction of the Project within the term of this Agreement, as provided in Section 3.3, unless extended by mutual agreement of the Parties.

3.2 Funding. WRCOG hereby agrees to distribute to RCTC, on the terms and conditions set forth herein, a sum not to exceed, \$13,500,000 of TUMF Zone Program Funds (“Funding Amount”) to be used for reimbursing RCTC for expenses for the Project. The Parties acknowledge and agree that the Funding Amount may be less than the actual cost of the Project.

A Procedures for Distribution of TUMF Zone Program Funds to RCTC and Beaumont.

i. RCTC shall be responsible for initial payment of all costs of the Project as they are incurred. Following payment of such costs, RCTC shall submit invoices to WRCOG requesting reimbursement of eligible costs for the Project. Each invoice shall be accompanied by detailed contractor invoices, or other demands for payment addressed to the RCTC, and documents evidencing RCTC’s payment of the invoices or demands for payment. Documents evidencing RCTC’S payment of the invoices shall be retained for four (4) years and shall be made available for review by WRCOG. RCTC shall submit invoices not more often than monthly and not less often than quarterly.

ii. Procedures for distribution of TUMF Zone Program Funds to Beaumont shall follow the procedures set forth in the separate TUMF Agreement between Beaumont and WRCOG for the Project.

B Review and Reimbursement by WRCOG.

i. Upon receipt of an invoice from RCTC, WRCOG may request additional documentation or explanation of the costs for the Project for which reimbursement is sought.

ii. Procedures for Review and Reimbursement by WRCOG to Beaumont shall follow the procedures set forth in the separate TUMF Agreement between Beaumont and WRCOG.

C. Funding Amount/Adjustment. If a post Project audit or review indicates that WRCOG has provided reimbursement to RCTC in an amount in excess of the amount outlined in Section 3.2 of this Agreement or has provided reimbursement of ineligible costs of the Project, RCTC shall reimburse WRCOG for the excess or ineligible payments within 30 days of notification by WRCOG. Costs may be considered ineligible if they are not reasonable, not allocable to the Project, or are not properly documented as set forth in Section 3.2(A)(i).

### 3.3 Term of Agreement.

The term of this Agreement shall extend from the Effective Date (as set forth above) and will remain in effect through January \_\_\_\_\_, 2028, or until written agreement by the Parties that the Project has been completed, unless earlier terminated as provided in this Agreement.

3.4 Cooperation. RCTC, Beaumont, and WRCOG agree to cooperate in the construction the Project and the implementation of this Agreement.

3.5 Reporting. RCTC shall, in a timely manner, provide milestone reports to Beaumont and/or WRCOG, detailing the progress of construction of the Project.

### 3.6 Mutual Indemnification.

A. RCTC shall indemnify, defend and hold Beaumont and WRCOG, and their respective councils, board members, 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 Agreement, including the payment of all reasonable attorneys' fees.

Beaumont shall indemnify, defend and hold RCTC and WRCOG, and their respective board members, 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 Beaumont, its officials, officers, employees, agents, consultants or contractors in the performance of Beaumont's obligations under this Agreement, including the payment of all reasonable attorneys' fees.

WRCOG shall indemnify, defend and hold RCTC and Beaumont, and their respective councils, board members, 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 WRCOG, its officials, officers, employees, agents, consultants or contractors in the performance of WRCOG's obligations under this Agreement, including the payment of all reasonable attorneys' fees.

3.8 Amendments. The terms and conditions of this Agreement shall not be altered or modified at any time except by a written amendment executed by the mutual consent of the Parties.

3.9 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 any Party shall be deemed to waive or render unnecessary such Party's consent to or approval of any subsequent act of any other Party. Any waiver by a 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 Agreement.

3.10 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this 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 Agreement, which shall be interpreted to carry out the intent of the Parties hereunder.

3.11 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, shall survive any such expiration or termination.

3.12 Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

3.13 Termination. Any Party may terminate this Agreement by giving thirty (30) days written notice thereof. Notwithstanding any such termination, WRCOG shall reimburse RCTC for all Project costs incurred prior to termination, and for any actual and reasonable costs incurred as a result of termination, provided that such costs are documented and invoiced in accordance with the terms of this Agreement.

3.14 Assignment or Transfer. The Parties 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 other Parties. 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.

3.15 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation

3.16 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To RCTC: Riverside County Transportation Commission  
4080 Lemon Street, Third Floor  
P.O. Box 12008  
Riverside, CA 92502-2208  
Attention: Executive Director

To Beaumont: City of Beaumont  
550 E. 6<sup>th</sup> Street  
Beaumont, CA 92223  
Attention: Director of Public Works

Copy to:

To WRCOG : Western Riverside Council of Governments  
3390 University Ave, Suite 200  
Riverside, California 92501  
Attention: Executive Director

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

3.17 Time of Performance. Time is of the essence in the performance of this Agreement.

3.18 Governing Law. This Agreement is in all respects governed by California law and venue for any dispute shall be in Riverside County.

3.19 Insurance. The Parties each verify that they are self-insured, maintain insurance coverage through a Joint Powers Authority, or maintain insurance through commercial insurance providers in reasonable and customary amounts for their respective operations.

3.20 Authority to Enter into Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party.

3.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

3.22 Electronically Transmitted Signatures; Electronic Signatures. 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 this Agreement for all purposes. This Agreement may be signed using an electronic signature.

3.23 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.

[Signatures on following page]



**SIGNATURE PAGE  
TO  
POTRERO BOULEVARD INTERCHANGE PHASE 2 AT STATE ROUTE 60  
CONSTRUCTION COOPERATIVE AGREEMENT**

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

**RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION**

By: \_\_\_\_\_  
Aaron Hake, Executive Director

**CITY OF BEAUMONT**

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

**WESTERN RIVERSIDE COUNCIL OF  
GOVERNMENTS**

By: \_\_\_\_\_  
Dr. Kurt Wilson, Executive Director

**APPROVED AS TO FORM:**

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

**ATTEST:**

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



# **AGENDA ITEM 9**



<b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b>	
<b>DATE:</b>	February 24, 2025
<b>TO:</b>	Western Riverside County Programs and Projects Committee
<b>FROM:</b>	Joie Edles Yanez, Capital Projects Manager
<b>THROUGH:</b>	Erik Galloway, Project Delivery Director
<b>SUBJECT:</b>	Interstate 10 and State Route 79 Interchange Project Funding and Cooperative Agreement

**STAFF RECOMMENDATION:**

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Approve the use of up to \$2,009,400 of Transportation Uniform Mitigation Fee (TUMF) Regional Arterial funds for the project initiation document (PID) phase of the Interstate 10 / State Route 79 (I-10 / SR-79) Interchange Project (Project);
- 2) Approve Cooperative Agreement No. 25-72-064-00 with the city of Beaumont for the I-10 / SR-79 Interchange Project PID phase; and
- 3) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement on behalf of the Commission.

**BACKGROUND INFORMATION:**

The Riverside County Transportation Commission (RCTC), in collaboration with the city of Beaumont (City) and the California Department of Transportation (Caltrans), is proposing to evaluate potential improvements to the interchange and local arterial roads at the intersection of I-10 and SR-79 in the city of Beaumont. The I-10 / SR-79 Interchange is located at the north junction of SR-79 and I-10 and consists of a four-quadrant tight diamond configuration, with a dual function of providing local access and interregional travel. See Attachment 1. Reconstruction of the I-10 / SR-60 / SR-79 Interchange was identified as a long-range project in Caltrans' September 2011 Pass Area Regional Transportation Needs Assessment Report. This intersection serves as a critical transportation hub for commuter traffic traveling to Western Riverside County, Orange County, and Los Angeles County, as well as a key corridor for freight traffic moving through California and the Western United States.

Currently, the I-10 and SR-79 corridors face significant challenges, including lane configuration issues and increasing traffic congestion on both the highways and adjacent local roads. Moreover, there is no direct connection between I-10 and SR-79 or between SR-60 and SR-79. Travelers using I-10 must exit at Beaumont Avenue to access SR-79, which increases congestion on local roads such as Beaumont Avenue, Pennsylvania Avenue, 1st Street, 8th Street, and Veile Avenue.

## **DISCUSSION:**

In October 2024, the City formally requested that RCTC lead all phases of the Project on its behalf. These phases include the PID, project approval/environmental document (PA/ED), plans, specifications and estimates (PS&E), Right of Way (ROW), and Construction. See Attachment 2. Upon Commission approval, RCTC will initiate project activities for the PID phase.

The first phase of the Caltrans Project Development Process is the PID phase. The documents developed during the PID phase are required to be reviewed and approved by Caltrans before any major or high complexity project can be programmed and constructed on the State Highway System (SHS). The PID process documents the project scope and allows funds to be programmed for future phases. Since this project is locally sponsored, a project study report (PSR) or project study report-project development support (PSR-PDS) is developed to identify potential alternatives and improvements that would help address the existing traffic conditions and regional travel demand.

RCTC has identified the need for a PID for the I-10 / SR-79 interchange in the city of Beaumont. The study will analyze potential alternatives for modifying the existing local roads, interchanges, and ramps to provide improved traffic circulation. The PSR-PDS will also identify the estimated cost for the project, including PA/ED, PS&E, ROW, Construction, and support costs.

## **Agreements**

### **City of Beaumont Cooperative Agreement**

A cooperative agreement with the City is required to identify the Commission and City responsibilities during the PID phase. See Attachment 3. RCTC will implement the Project with the City providing oversight. RCTC proposes to program up to \$2,009,400 in TUMF Regional Arterial funding for all expenses incurred in the PID phase, including PID consultant costs, Caltrans expenses, RCTC staff time and other support costs. The City has committed to funding any costs exceeding the \$2,009,400 programmed by RCTC to complete the PID phase. Furthermore, all subsequent project phases including PA/ED, PS&E, ROW, Construction, and related support costs will be funded by the City. An amendment to the agreement will be developed once the City has secured funding for the subsequent phases and is ready to move forward. At that time, staff will return to the Commission with the amended cooperative agreement and other contract items required to advance the Project into the next phase.

### ***Other Agreements***

A three-party cooperative agreement with Caltrans, City, and Commission will be needed to identify the responsibilities of all parties with the Commission as the implementing agency, and City and Caltrans responsible for the review and approval of the design. Staff will request approval of this three-party cooperative agreement at the time of consultant award for the PID.

**FISCAL IMPACT:**


Costs incurred during the Project’s PID phase including consultant fees, costs associated with Caltrans involvement, RCTC staff time, and other support costs will be funded from RCTC TUMF Regional Arterial funds for a not to exceed amount of \$2,009,400. Any PID costs exceeding the \$2,009,400 programmed by RCTC to complete the PID phase will be funded by the City. All future project costs, including PA/ED, PS&E, ROW, Construction, and related support will also be funded by the City. Funding for the subsequent project phases has not yet been identified.

**Funding Source Breakdown**

Item	Dollar Amount	Fund Source
1 I-10 / SR-79 Interchange Project PID Consultant + 10% Contingency	\$1,205,400	TUMF Regional Arterial
2 Caltrans Oversight / Review	\$450,000	TUMF Regional Arterial
3 Program Management (RCTC, Bechtel, and BB&K)	\$354,000	TUMF Regional Arterial
<b>Total</b>	<b>\$2,009,400</b>	

**Expenditure Schedule**

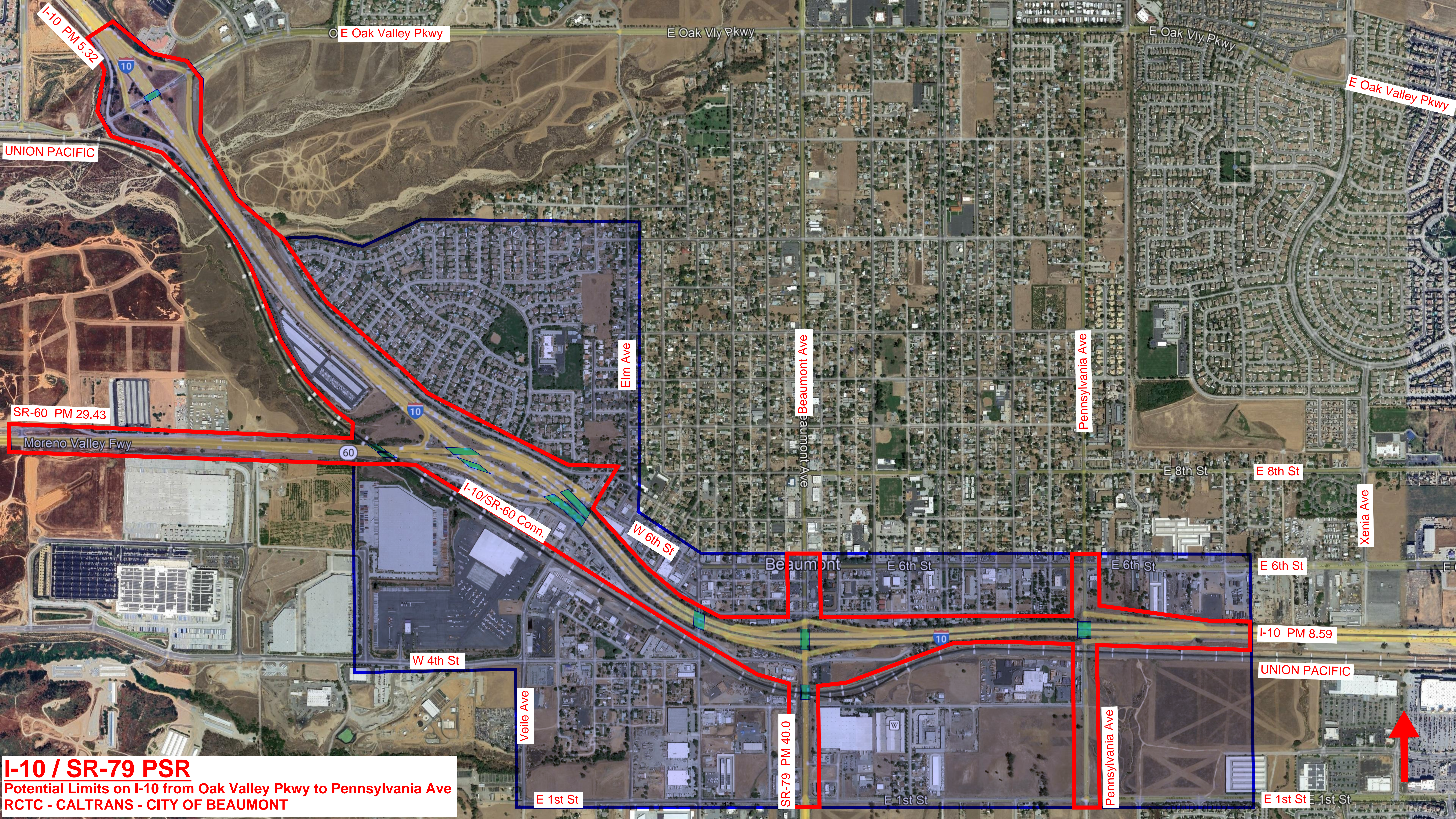
Item	FY 2024/25	FY 2025/26+	Project Accounting No.
1 I-10 / SR-79 Interchange Project PID Consultant w/ Contingency	\$0	\$1,205,400	005145
2 Caltrans Oversight / Review	\$0	\$450,000	005145
3 Program Management (RCTC, Bechtel, and BBK)	\$50,000	\$304,000	005145
<b>Total</b>	<b>\$50,000</b>	<b>\$1,959,400</b>	<b>\$2,009,400</b>

Financial Information					
In Fiscal Year Budget:	Yes	Year:	FY 2024/25 FY 2025/26+	Amount:	\$50,000 \$1,959,400
Source of Funds:	TUMF Regional Arterial			Budget Adjustment:	No
GL/Project Accounting No.:	005145 81101 00000 0000 210 72 81101 Preliminary Engineering 005145 81110 00000 0000 210 72 81101 Engineering and Environmental Support Services 005145 81001 00000 0000 210 72 81001 Program Management 005145 60001 00000 0000 210 72 60001 Wage and Fringe Benefits 005145 65101 00000 0000 210 72 65101 General Legal Services				
Fiscal Procedures Approved:				Date:	02/18/2025

Attachments:

- 1) Project Vicinity Map
- 2) Letter from City of Beaumont
- 3) Draft Cooperative Agreement





E Oak Valley Pkwy

E Oak Vly Pkwy

E Oak Vly Pkwy

E Oak Valley Pkwy

I-10 PM 5.32

UNION PACIFIC

SR-60 PM 29.43

Moreno Valley Fwy

60

I-10/SR-60 Conn.

W 6th St

Elm Ave

Beaumont Ave

Pennsylvania Ave

E 8th St

E 8th St

Xenia Ave

W 4th St

Veile Ave

Beaumont

E 6th St

E 6th St

E 6th St

I-10 PM 8.59

UNION PACIFIC

**I-10 / SR-79 PSR**  
Potential Limits on I-10 from Oak Valley Pkwy to Pennsylvania Ave  
RCTC - CALTRANS - CITY OF BEAUMONT

E 1st St

SR-79 PM 40.0

E 1st St

Pennsylvania Ave

E 1st St

E 1st St







October 3, 2024

Via Electronic Mail Only: [AHake@RCTC.org](mailto:AHake@RCTC.org)

Aaron Hake, Executive Director  
Riverside County Transportation Commission  
4080 Lemon St. 3rd Fl. P.O Box 12008  
Riverside, CA 92502

Subject: Interstate 10 and State Route 79 Interchange Project Initiation

Dear Mr. ~~Hake~~, *Aaron*

This letter is intended as a formal request from the City of Beaumont to the Riverside County Transportation Commission (RCTC) to initiate the Interstate 10 and State Route 79 Interchange Project (Project) on behalf of the city. We recognize the vital role RCTC plays in regional transportation development and are confident in your ability to manage this significant project.

We hereby grant RCTC full authority to perform all necessary tasks for the completion of the Project across all phases, including Project Initiation Document (PID), Project Approval & Environmental Document (PA&ED), Plans, Specifications & Estimates (PS&E), and Construction.

RCTC has committed to allocating funding for the PID phase. The City of Beaumont is committed to allocating funding for all subsequent project phases to ensure the Project's successful execution. This interchange project is critical to our community as it aims to significantly reduce regional traffic congestion on Interstate 10 and State Route 79, thereby enhancing the overall transportation infrastructure and quality of life for our residents.

On behalf of the Beaumont City Council and community stakeholders, we look forward to working closely with RCTC to bring this Project to fruition.

Sincerely,

Elizabeth Gibbs  
City Manager



## Agreement No. 25-72-064-00

**COOPERATIVE AGREEMENT  
BETWEEN**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION, AND  
THE CITY OF BEAUMONT**

**FOR THE PREPARATION OF THE INTERSTATE 10 / STATE ROUTE 79  
(I-10 / SR-79) INTERCHANGE PROJECT INITIATION DOCUMENT (PID)**

1. Parties and Date. This Cooperative Agreement is made and entered into this [REDACTED] day of [REDACTED], 2025 ("Effective Date"), by and between the Riverside County Transportation Commission ("RCTC"), and the City of Beaumont ("City"). RCTC and the City are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

2. Recitals.

2.1 The City has requested that RCTC be the lead agency for the preparation of the Project Initiation Document ("PID") for the I-10 / SR-79 Interchange Project ("Project").

2.2 RCTC has agreed to act as the lead agency for the preparation of the PID for the Project.

2.3 RCTC has allocated a maximum contribution of \$5.785 Million in Transportation Uniform Mitigation Fund (TUMF) Regional Arterial for the preparation of the PID for the Project.

2.4 City will fund all subsequent Project phases including Project Approval & Environmental Document (PA&ED), Plans, Specifications & Estimates (PS&E), Right-of-Way (ROW), and Construction.

2.5 The Project is located wholly within the jurisdictional boundaries of the City of Beaumont and may require improvements to streets within the City.

2.6 The Parties anticipate entering into a future amendment to this Cooperative Agreement or into future cooperative agreement(s) to address future phases of the Project.

3. Terms.

3.1 Preparation of a PID for the I-10 / SR-79 Interchange Project.

A. RCTC shall prepare the PID for the Project using TUMF Regional Arterial funds. RCTC shall be the lead agency for the preparation of the PID. In

the case that additional funds are needed to complete the PID, the City shall be responsible for identifying the source of such funding for the PID, and any allocation of additional funding shall be by an amendment to this Cooperative Agreement

B. RCTC shall complete preparation of the PID within the term of this Cooperative Agreement, as provided in Section 3.2, unless extended by mutual agreement of the Parties

C. Funding and responsibilities for any other phases of the Project, or construction of any portion or all of the Project, shall be addressed in an amendment to this Cooperative Agreement or pursuant to separate agreement(s). The Parties agree that the City shall be responsible for funding or securing funding sources for all other phases of the Project.

3.2 Term of Agreement. The term of this Cooperative Agreement shall commence on the Effective Date and will remain in effect through [REDACTED], or until written agreement by the Parties that the Project has been completed, unless earlier terminated as provided in this Cooperative Agreement.

3.3 Use of PID. The Parties understand and agree that the PID, upon completion, may be used by the City of and/or Caltrans for completion of other phases of the Project.

3.4. Cooperation. The Parties agree to cooperate in the development of the PID for the Project and the implementation of this Cooperative Agreement. Additionally, the Parties agree to cooperate in all future phases of the Project.

3.5 Reporting. RCTC shall, in a timely manner, provide milestone reports to the City, detailing the progress of preparation of the PID.

3.6 Mutual Indemnification.

A. RCTC shall indemnify, defend and hold the City, its City Council, 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.

B. The City 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 City, its officials, officers, employees, agents, consultants or

contractors in the performance of the City obligations under this Cooperative Agreement, including the payment of all reasonable attorneys' fees.

3.7 Amendments. The terms and conditions of this Cooperative Agreement shall not be altered or modified at any time except by a written amendment executed by both Parties.

3.8 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.

3.9 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.

3.10 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.

3.11 Third Party Beneficiaries. There are no third-party beneficiaries to this Cooperative Agreement.

3.12 Termination. Any Party may terminate this Cooperative Agreement by giving thirty (30) days written notice thereof.

3.13 Assignment or Transfer. The Parties shall not assign, hypothecate, or transfer, either directly or by operation of law, this Cooperative Agreement or any interest herein without the prior written consent of the other Party. 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.

3.14 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation

3.15 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To RCTC: Riverside County Transportation Commission  
4080 Lemon Street, Third Floor  
P.O. Box 12008  
Riverside, CA 92502-2208  
Attention: Executive Director

Copy to: Best, Best & Krieger, LLP  
3390 University Ave. 5fl.  
Riverside, CA 92501  
Attention: Steven C. Debaun

To City: City of Beaumont  
550 E. 6<sup>th</sup> Street  
Beaumont, California 92223  
Attention: Director of Public Works

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

3.16 Time of Performance. Time is of the essence in the performance of this Cooperative Agreement.

3.17 Governing Law. This Cooperative Agreement is in all respects governed by California law and venue for any dispute shall be in Riverside County.

3.18 Insurance. The Parties each verify that they are self-insured, maintain insurance coverage through a Joint Powers Authority, or maintain insurance through commercial insurance providers in reasonable and customary amounts for their respective operations.

3.19 Authority to Enter into Agreement. Each Party warrants that the individuals who have signed this Cooperative Agreement have the legal power, right and authority to make this Cooperative Agreement and bind each respective Party.

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

3.21 Counterparts. This Cooperative Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

3.22 Electronically Transmitted Signatures; Electronic Signatures. A manually signed copy of this Cooperative 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 this Cooperative Agreement for all purposes. This Cooperative Agreement may be signed using an electronic signature.



3.23 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.

[Signatures on following page]

**SIGNATURE PAGE  
TO  
I-10 / SR-79 INTERCHANGE PROJECT  
PROJECT INITIATION DOCUMENT COOPERATIVE AGREEMENT**

**IN WITNESS WHEREOF**, the parties hereto have executed this Cooperative Agreement as of the date first herein above written

**RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION**

By: \_\_\_\_\_  
Aaron Hake, Executive Director

**CITY OF BEAUMONT**

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

**APPROVED AS TO FORM:**

Best Best & Krieger LLP  
  
\_\_\_\_\_  
General Counsel to RCTC

**APPROVED AS TO FORM:**

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

**ATTEST:**

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

# **AGENDA ITEM 10**



<b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b>	
<b>DATE:</b>	February 24, 2025
<b>TO:</b>	Western Riverside County Programs and Projects Committee
<b>FROM:</b>	Monica Morales, Senior Management Analyst Eric DeHate, Transit Manager
<b>THROUGH:</b>	Lorelle Moe-Luna, Multimodal Services Director
<b>SUBJECT:</b>	Measure A Specialized Transit Award Recommendations for Fiscal Years 2024/25 – 2026/27 - Amendment 2

**STAFF RECOMMENDATION:**

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Approve Amendment 2 with additional awards totaling \$286,992 for the Western Riverside County Measure A Specialized Transit Program Fiscal Years (FY) 2024/25 – 2026/27 Call for Projects, for a total amount of \$11,210,587;
- 2) Approve Amendment No. 1 to Agreement No. 24-26-114-00 with Operation SafeHouse for an additional amount of \$44,297 for Operating from Measure A Specialized Transit funds, for a total not to exceed contract amount of \$195,738;
- 3) Approve Amendment No. 1 to Agreement No. 24-26-106-00 with Angel View, Inc. for an additional amount of \$40,450 for Operating from Measure A Specialized Transit funds, for a total not to exceed contract amount of \$270,417;
- 4) Approve Amendment No. 1 to Agreement No. 24-26-113-00 with Michelle’s Place Cancer Resource Center (Michelle’s Place) for an additional amount of \$68,805 for Operating from Measure A Specialized Transit funds, for a total not to exceed contract amount of \$146,085;
- 5) Approve Amendment No. 1 to Agreement No. 24-26-112-00 with Independent Living Partnership (ILP) for an additional amount of \$33,440 for Capital from Measure A Specialized Transit funds, for a total not to exceed contract amount of \$1,820,181;
- 6) Approve Amendment No. 1 to Agreement No. 24-26-128-00 with Forest Folk, Inc. (Forest Folk) for an additional amount of \$100,000 for a replacement vehicle from Measure A Specialized Transit funds, for a total not to exceed contract amount of \$441,389; and
- 7) Authorize the Chair or Executive Director to execute the agreements with the award recipients, pursuant to legal counsel review.

**BACKGROUND INFORMATION:**

The 2009 Measure A Expenditure Plan allocates approximately 12 percent of the annual revenues from the 2009 Measure A Western County program to public transit. The public transit allocation is then distributed amongst five programs: specialized transit services, specialized transit -

consolidated transportation service agency, commuter rail, intercity bus, and commuter assistance. The Measure A Specialized Transit Program receives about 2 percent of the 2009 Measure A Western County program revenue, or a 16.4 percent share of the 12 percent for public transit. The program provides funding to benefit older adults, persons with disabilities, and/or those that are most vulnerable and truly needy in Western County. In Western County, this funding has been distributed through a competitive process every three years to a wide array of non-profit and community organizations that serve these constituencies for specialized transit services for persons with disabilities and older adults.

The goals of the Measure A Specialized Transit Program for Western County are to:

- Support directly operated services that expand or extend existing services, which, if not funded by Measure A funds, would leave an area and/or special population without alternate service options.
- Support existing services that offer an improved level of service coordination with the existing transportation network.
- Expand new services that leverage other revenue sources, can be administered in a cost-effective manner, and will not require long term support from measure A funding; and
- Support new and expansion of existing services including transportation for veterans and shuttles including, but not limited to, nutrition and medical services.

Projects that are eligible under the program include operating and capital projects such as senior transportation shuttles, non-emergency medical transportation services, bus pass/voucher programs, mileage reimbursement programs, travel training, vehicle and maintenance equipment, communications and dispatch equipment and mobility management.

Providing funding to non-profit providers of transit services for persons with disabilities, low income, and senior citizens has long been a priority of the Commission. Specialized transit providers play an important role in the public transportation network, offering over 190,000 one-way trips annually.

**DISCUSSION:**

The available funding for the FY 2024/25 – 2026/27 Measure A Specialized Transit Program cycle is \$12,181,000. At its June 2024 and September 2024 meetings, the Commission approved 22 applications from 17 different agencies totaling \$10,923,595, including \$9,945,249 from the original award and \$978,346 from Amendment 1 (Table 1). At its June 2024 meeting, the Commission also approved for the call for projects to remain open while funding is available.

Amendment 2 includes additional funding requests from the following five agencies:

Operation SafeHouse provides emergency shelter, intervention and outreach services to homeless and youth in crisis. These services include cost-free transportation services, which can include but are not limited to, medical appointments, the County Department of Social Services, job interviews, places of employment, grocery shopping and schooling. Operation SafeHouse

was originally awarded \$151,441 with an estimated 600 one-way trips annually. Based on Operation SafeHouse's current data, they anticipate they will provide an additional 100 one-way passenger trips per year in FY2025/26 and FY2026/27. Operation Safehouse is requesting an additional \$44,297 over the next three years, bringing the new contract total to \$195,738.

Angel View has provided services for children that are disabled in Riverside County for over 70 years. One of the services it offers is a mileage reimbursement program to assist clients with disabilities and/or chronic and life-threatening illnesses to access specialty pediatric care. Angel View who was originally awarded \$229,967 estimated a total of 11,834 one-way trips; however, based on recent trends, estimates providing an additional 3,300 trips over the three-year call for projects. They are requesting an additional \$40,450 to cover these trips, for a total contract amount of \$270,417.

Michelle's Place provides no cost resources and support to cancer patients and their families. The Commission awarded the agency \$77,280 in operating funds to support transportation services for their clients to access medical treatment such as chemotherapy, radiation, and follow-up appointments. Nearly half of the clients travel outside of the area for cancer treatment and due to the nature of the treatment many are unable to drive themselves. Michelle's Place originally estimated 252 one-way trips would be provided annually during the three-year period; however, as of October 2024, they have been able to provide 193 trips. They project they will exceed their annual goal and are requesting an additional \$68,805 in Measure A funding to provide a total of 500 trips annually over the three-year cycle. This request will bring their new contract amount to \$146,085.

Independent Living Partnership (ILP) operates a self-directed mileage reimbursement program known as Transportation Reimbursement and Information Project (TRIP) since 1993. The mission of ILP is to ensure the independence and dignity of the elderly and persons with disabilities, their families, and caregivers through educations and access to empowering services and resources. A key component to the success of the TRIP program includes the creation of a specialized and scalable program known as TripTrak. TripTrak is a standalone software package which maintains client records, mileage data and reimbursements to successfully manage the program and provide detailed reporting data. The Commission awarded \$1,709,979 in operating and \$76,762 in capital funding to ILP in the current cycle. The capital request was for an upgrade to the TripTrak software that would move to a cloud-based platform and automate many aspects to the software. As the project has progressed during the year, ILP determined additional features were needed to improve and enhance the upgrade including importing existing data into the new system. ILP is seeking an additional \$33,440 in capital to support this upgrade, for a revised contract amount of \$1,820,181.

Forest Folk is a non-profit organization that provides needed services, programs, recreation and other activities for seniors in the Idyllwild community. Their original award included \$241,389 for operations and \$100,000 for the replacement of the primary passenger van. Forest Folk is requesting an additional \$100,000 in capital funds for the replacement of their secondary vehicle, a 1999 Ford van, which has also far exceeded its useful life and has undergone significant

maintenance. Replacement of the vehicle will provide long term reliability, reduced maintenance cost, and potentially increase ridership when both vehicles are used for service. The additional funding would bring the contract award to \$441,389 for both operating and capital projects.

The total additional funding requested in Amendment 2 is \$286,992, bringing the total award for the call for projects to \$11,210,587. A total of \$970,413 remains available for program awards as shown in Table 1.

Table 1. Summary of Available Funding\*

<b>Fiscal Years 2024/25 – 2026/27</b>	
<b>Fiscal Year Funding</b>	<b>Total</b>
FY 2024/25	\$ 4,030,000
FY 2025/26	4,035,000
FY 2026/27	4,116,000
<b>Total Available Funding</b>	<b>\$ 12,181,000</b>
Original Award	9,945,249
Amendment 1	978,346
Amendment 2	286,992
<b>Total Awarded</b>	<b>\$11,210,587</b>
Remaining Funding	\$ 970,413

\*Revised funding amounts based on updated finance projections

Staff has evaluated the funding requests based on the approved program guidelines and recommends the Commission approve the contract amendments. Staff also recommends the Commission authorize the Chair or Executive Director to execute the agreements with the award recipients, pursuant to legal counsel review.

If additional applications are received, staff will return to the Commission and recommend funding up to the amount available.


**FISCAL IMPACT:**

The additional funding to these contracts will not require a budget adjustment as sufficient funds were included in the approved FY 2024/25 budget. FY 2024/25 budget consisted of \$4,289,000 in anticipated Measure A specialized call for project expenses. The Commission approved the revised revenues projections in February to a new amount of \$4,030,000. Sufficient fund balance will cover the difference between the revenues and amount budgeted, if needed. Funding for years FY 2025/26 and FY 2026/27 will be included in the annual budget process. Table 2 shows the breakdown of the current three-year call for projects funding by fiscal year with the additional \$286,992 request.



Table 2. Breakdown of funding type by Fiscal Year

<b>Fiscal Year</b>	<b>Operating</b>	<b>Capital</b>	<b>Unallocated</b>	<b>Total</b>
FY 2024/25	\$ 3,400,221	\$ 377,702	\$ 252,077	\$ 4,030,000
FY 2025/26	3,598,944	12,500	423,556	4,035,000
FY 2026/27	3,808,720	12,500	294,780	4,116,000
<b>Total</b>	<b>\$ 10,807,885</b>	<b>\$ 402,702</b>	<b>\$ 970,413</b>	<b>\$ 12,181,000</b>

<b>Financial Information</b>					
In Fiscal Year Budget:	Yes	Year:	FY2024/25 FY2025/26+	Amount:	\$4,289,000 \$8,151,000
Source of Funds:	2009 Measure A Western County Specialized Transit		Budget Adjustment:		No
GL/Project Accounting No.:	Operating and Capital (allocated) total: 260 26 86101 \$153,552 Specialized Transit Operating Amendment 2 260 26 86102 \$133,440 Specialized Transit Capital Amendment 2 260 26 86101 \$978,346 Transit Operating Amendment 1 260 26 86101 \$9,675,987 Specialized Transit Operating Original 260 26 86102 \$269,262 Specialized Transit Capital Original				
Fiscal Procedures Approved:				Date:	02/13/2025

Attachment: FY 2024/25–2026/27 Measure A Specialized Transit Award Recommendations - Amendment 2





# SPECIALIZED TRANSIT

## FY 2024/25 - FY 2026/27 PROJECT RECOMMENDATIONS - Amendment 2

Applicant	Project Type	Project Name	Total 3-Year Project Cost	Total 3-Year Measure A Award	Required Match
1 B&GC Menifee Valley	Operating - Direct Transportation	Ride to Success	\$ 520,500	\$ 343,530	\$ 176,800
2 B&GC Southwest County	Operating - Direct Transportation	Before and After School Specialized Transportation	\$ 778,918	\$ 514,085	\$ 264,833
3 Care A Van	Operating - Direct Transportation	Care-A-Van Transit	\$ 2,312,690	\$ 1,526,377	\$ 773,992
4 City of Norco	Operating - Direct Transportation	Seniors on the Move	\$ 548,233	\$ 361,836	\$ 186,400
5 Forest Folk*	Operating - Direct Transportation	Idyllwild Area Shuttle Service	\$ 299,889	\$ 241,389	\$ 58,500
6 Friends of Moreno Valley	Operating - Direct Transportation	Senior Transportation	\$ 737,809	\$ 400,433	\$ 337,376
7 Operation SafeHouse	Operating - Direct Transportation	Main Street Transitional Living & Permanent Supportive Housing Program**	\$ 296,573	\$ 195,738	\$ 100,835
8 RUHS BH	Operating - Direct Transportation	Transportation Change	\$ 1,941,393	\$ 1,281,497	\$ 660,073
9 RUHS MC	Operating - Direct Transportation	Transportation	\$ 1,855,982	\$ 1,224,948	\$ 631,034
10 Valley Resource Center dba EXCEED	Operating - Direct Transportation	Western Riverside Transportation	\$ 2,828,681	\$ 1,049,681	\$ 1,779,000
11 Angel View	Operating - Mileage Reimbursement	Mileage Reimbursement**	\$ 422,527	\$ 270,417	\$ 152,110
12 Independent Living Partnership	Operating - Mileage Reimbursement	Volunteer Escort-Driver Reimbursement Program	\$ 4,583,647	\$ 1,709,979	\$ 2,873,668
13 Voices For Children	Operating - Mileage Reimbursement	Mileage Reimbursement	\$ 1,336,102	\$ 354,595	\$ 981,507
14 Blindness Support Services	Operating - Travel Training Assistance	Travel Training	\$ 316,590	\$ 208,949	\$ 107,641
15 Michelles Place	Operating - Voucher Program	Treatment Travel Assistance Program**	\$ 221,340	\$ 146,085	\$ 75,255
16 Independent Living Partnership*	Capital - Equipment	Software Upgrade**	\$ 110,202	\$ 110,202	\$ -
17 B&GC Menifee Valley	Capital - Replacement Vehicle	Replacement - Six Passenger Vans	\$ 75,000	\$ 37,500	\$ 37,500
18 Forest Folk*	Capital - Replacement Vehicle	Replacement - Two Passenger Vans**	\$ 200,000	\$ 200,000	\$ -
19 RUHS BH	Capital - Replacement Vehicle	Replacement - One Passenger Van	\$ 55,000	\$ 27,500	\$ 27,500
20 RUHS MC	Capital - Replacement Vehicle	Replacement - One Mini Van	\$ 55,000	\$ 27,500	\$ 27,500
21 Care Connexus	Operating - Direct Transportation	Specialized Transportation	\$ 976,338	\$ 644,384	\$ 331,954
22 US Vets	Operating - Direct Transportation	Inland Empire Transportation- Riverside	\$ 506,003	\$ 333,962	\$ 172,041
<b>Grand Total</b>			<b>\$ 20,978,417</b>	<b>\$ 11,210,587</b>	<b>\$ 9,755,519</b>
Operating Total			\$ 20,483,215	\$ 10,807,885	\$ 9,663,019
Capital Total			\$ 495,202	\$ 402,702	\$ 92,500

\* Transportation-only organization reduced match was requested and approved

\*\* Inclusive of original and all amendments

## FY 2024/25 - FY 2026/27 PROJECT REQUESTS NOT AWARDED

Applicant	Project Type	Project Name	Total 3-Year Project Cost	Total 3-Year Measure A Award	Required Match
23 RUHS BH	Capital - Expansion	Expansion - One wheelchair van	\$ 85,000	\$ -	\$ -
			<b>\$ 85,000</b>	<b>\$ -</b>	<b>\$ -</b>



# **AGENDA ITEM 11**



<b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b>	
<b>DATE:</b>	February 24, 2025
<b>TO:</b>	Western Riverside County Programs and Projects Committee
<b>FROM:</b>	Lisa Mobley, Administrative Services Director/Clerk of the Board
<b>THROUGH:</b>	David Knudsen, Deputy Executive Director
<b>SUBJECT:</b>	Election of Officers for the Western Riverside County Programs and Projects Committee

**STAFF RECOMMENDATION:**

This item is for the Committee to:

- 1) Conduct an election of officers for 2025 – Chair and Vice Chair.

**BACKGROUND INFORMATION:**

The election of officers for the full Commission and its Committees are held on an annual basis. Commissioners Wes Speake (Chair) and Joseph Morabito (Vice Chair) were elected as the Western Riverside County Programs and Projects Committee’s officers for 2024. Once the election for 2025 is conducted, the new Chair and Vice Chair will immediately assume the positions.

Past Chairs of the Western Riverside County Programs and Projects Committee are as follows:

- 2024 – Wes Speake, City of Corona
- 2023 – Brian Berkson, City of Jurupa Valley
- 2022 – Ben J. Benoit, City of Wildomar
- 2021 – Clint Lorimore, City of Eastvale
- 2020 – Michael Vargas, City of Perris
- 2019 – Brian Berkson, City of Jurupa Valley
- 2018 – Adam Rush, City of Eastvale
- 2017 – Deborah Franklin, City of Banning
- 2016 – Ben J. Benoit, City of Wildomar
- 2015 – Ben J. Benoit, City of Wildomar
- 2014 – Frank Johnston, City of Jurupa Valley
- 2013 – Andrew Kotyuk, City of San Jacinto
- 2012 – Adam Rush, City of Eastvale
- 2011 – Darcy Kuenzi, City of Menifee
- 2010 – Karen Spiegel, City of Corona