



## MEETING AGENDA

TIME/DATE: **9:30 a.m. / Wednesday, September 11, 2024**

LOCATION: **BOARD ROOM  
County of Riverside Administrative Center  
4080 Lemon Street, First Floor, Riverside**

TELECONFERENCE SITES: **COUNCIL CHAMBER CONFERENCE ROOM  
City of Palm Desert  
73510 Fred Waring Drive, Palm Desert**

**LARGE CONFERENCE ROOM  
French Valley Airport  
37600 Sky Canyon Drive, Murrieta**

## COMMISSIONERS

**Chair** – Lloyd White

**Vice Chair** – Karen Spiegel

**Second Vice Chair** – Raymond Gregory

Kevin Jeffries, County of Riverside, District 1  
Karen Spiegel, County of Riverside, District 2  
Chuck Washington, County of Riverside, District 3  
V. Manuel Perez, County of Riverside, District 4  
Yxstian Gutierrez, County of Riverside, District 5  
David Happe / Rick Minjares, City of Banning  
Lloyd White / Julio Martinez, City of Beaumont  
Joseph DeConinck / Johnny Rodriguez, City of Blythe  
Linda Molina / Wendy Hewitt, City of Calimesa  
Jeremy Smith / Jennifer Dain, City of Canyon Lake  
Raymond Gregory / Mark Carnevale, City of Cathedral City  
Steven Hernandez / Stephanie Virgen, City of Coachella  
Wes Speake / Jim Steiner, City of Corona  
Scott Matas / Russell Betts, City of Desert Hot Springs  
Clint Lorimore / Todd Rigby, City of Eastvale  
Linda Krupa / Malcolm Lilienthal, City of Hemet  
Dana Reed / Ty Peabody, City of Indian Wells

Waymond Fermon / Oscar Ortiz, City of Indio  
Brian Berkson / Armando Carmona, City of Jurupa Valley  
Kathleen Fitzpatrick / Deborah McGarrey, City of La Quinta  
Bob Magee / Natasha Johnson, City of Lake Elsinore  
Bill Zimmerman / Dean Deines, City of Menifee  
Ulises Cabrera / Edward Delgado, City of Moreno Valley  
Cindy Warren / Lori Stone, City of Murrieta  
Berwin Hanna / Katherine Aleman, City of Norco  
Jan Harnik / Kathleen Kelly, City of Palm Desert  
Lisa Middleton / Grace Garner, City of Palm Springs  
Michael M. Vargas / Rita Rogers, City of Perris  
Meg Marker / Lynn Mallotto, City of Rancho Mirage  
Chuck Conder / Patricia Lock Dawson, City of Riverside  
Valerie Vandever / Alonso Ledezma, City of San Jacinto  
James Stewart / Brenden Kalfus, City of Temecula  
Joseph Morabito / Ashlee DePhillippo, City of Wildomar  
Catalino Pining, Governor's Appointee Caltrans District 8

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





# **RIVERSIDE COUNTY TRANSPORTATION COMMISSION**

*www.rctc.org*

## **MEETING AGENDA\***

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

**9:30 a.m.**

**Wednesday, September 11, 2024**

### **Board Room**

**County of Riverside Administrative Center  
4080 Lemon Street, First Floor, Riverside, CA**

### **TELECONFERENCE SITES**

#### **COUNCIL CHAMBER CONFERENCE ROOM**

**City of Palm Desert**

**73510 Fred Waring Drive, Palm Desert, CA**

#### **LARGE CONFERENCE ROOM**

**French Valley Airport**

**37600 Sky Canyon Drive, Murrieta, CA**

This meeting is being conducted in person as well as via teleconference. Please visit <https://rivco.org/constituent-speaking-request> to complete a speaker slip and receive further instructions to participate via teleconference. For members of the public wishing to submit written comments, please email comments to the Clerk of the Board at [lmobley@rctc.org](mailto:lmobley@rctc.org) prior to September 10, 2024, and your comments will be made part of the official record of proceedings.

*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 Commission may, either at the direction of the Chair or by majority vote of the Commission, 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. In addition, the maximum time for public comment for any individual item or topic is thirty (30) minutes. Also, the Commission may terminate public comments if such comments become repetitious. Speakers may not yield their time to others without the consent of the Chair. Any written documents to*

*be distributed or presented to the Commission 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 Commission should not take action on or discuss matters raised during public comment portion of the agenda that are not listed on the agenda. Commission members may refer such matters to staff for factual information or to be placed on the subsequent agenda for consideration.*

**5. ADDITIONS / REVISIONS** – *The Commission 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 Commission subsequent to the posting of the agenda. An action adding an item to the agenda requires 2/3 vote of the Commission. If there are less than 2/3 of the Commission 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 – JULY 10, 2024**

**Page 1**

**6B. SINGLE SIGNATURE AUTHORITY REPORT**

**Page 8**

**Overview**

This item is for the Commission to:

- 1) Receive and file the Single Signature Authority report for the fourth quarter ended June 30, 2024.

**6C. QUARTERLY SALES TAX ANALYSIS**

**Page 10**

**Overview**

This item is for the Commission to:

- 1) Receive and file the sales tax analysis for the Quarter 1, 2024 (1Q 2024).

**6D. QUARTERLY FINANCIAL STATEMENTS**

**Page 19**

**Overview**

This item is for the Commission to:

- 1) Receive and file the Quarterly Financial Statements for the twelve months ended June 30, 2024.

**6E. MONTHLY INVESTMENT REPORT**

**Page 29**

**Overview**

This item is for the Commission to:

- 1) Receive and file the Monthly Investment Report for the month ended June 30, 2024.

**6F. MONTHLY INVESTMENT REPORT**

**Page 32**

**Overview**

This item is for the Commission to:

- 1) Receive and file the Monthly Investment Report for the month ended July 31, 2024.

**6G. CALIFORNIA DEPARTMENT OF TRANSPORTATION PROJECT AUDIT RESULTS**

**Page 35**

**Overview**

This item is for the Commission to:

- 1) Receive and file a report (No. 23-2660-060) on the California Department of Transportation (Caltrans) Project Audit performed by the California Department of Finance, Office of State Audits and Evaluations (OSAE).

**6H. FISCAL YEAR 2022/23 TRANSPORTATION DEVELOPMENT ACT AND MEASURE A AUDIT RESULTS**

**Page 61**

**Overview**

This item is for the Commission to:

- 1) Receive and file the Transportation Development Act (TDA) and Measure A audit results report for Fiscal Year (FY) 2022/23.

**6I. AUDIT PLAN FOR THE COMMISSION'S FISCAL YEAR 2023/24 AUDIT**

**Page 70**

**Overview**

This item is for the Commission to:

- 1) Receive and file the audit plan related to the upcoming audit of the Commission's Fiscal Year 2023/24 financial statements and ensure communication between auditor and those in charge with governance (Audit Ad Hoc Committee) of the Commission.

**6J. QUARTERLY PUBLIC ENGAGEMENT METRICS REPORT, APRIL - JUNE 2024**

**Page 86**

**Overview**

This item is for the Commission to:

- 1) Receive and file the Quarterly Public Engagement Metrics Report for April - June 2024.

**6K. STATE AND FEDERAL LEGISLATIVE UPDATE**

**Page 91**

**Overview**

This item is for the Commission to:

- 1) Receive and file a state and federal legislative update.

**6L. ON-CALL CONSTRUCTABILITY REVIEW AND MISCELLANEOUS CONSTRUCTION MANAGEMENT SUPPORT SERVICES FOR NON-RAIL CAPITAL PROJECTS**

**Page 108**

**Overview**

This item is for the Commission to:

- 1) Award the following agreements to provide on-call constructability review and miscellaneous construction management support services for non-rail capital 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 \$3,234,000;
  - a) Agreement No. 24-31-068-00 HDR Construction Control Corporation;
  - b) Agreement No. 24-31-124-00 FALCON Engineering Services, Inc.;
  - c) Agreement No. 24-31-125-00 Jacobs Project Management Co.;
  - d) Agreement No. 24-31-126- 00 WSP USA Inc.;
  - e) Agreement No. 24-31-127-00 ANSER Advisory Management, LLC;

- 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.

**6M. QUARTERLY REPORTING OF CONTRACT CHANGE ORDERS FOR CONSTRUCTION CONTRACTS**

*Page 539*

**Overview**

This item is for the Commission to:

- 1) Receive and file the Quarterly Report of Contract Change Orders for Construction Contracts for the three months ended June 30, 2024.

**6N. AGREEMENTS FOR ON-CALL RIGHT OF WAY ENGINEERING AND SURVEYING SERVICES**

*Page 541*

**Overview**

This item is for the Commission to:

- 1) Award the following agreements to provide on-call right of way engineering and surveying services for a three-year term, for a total aggregate amount not to exceed \$3,200,000;
  - a) Agreement No. 24-31-076-00 to David Evans and Associates, Inc.;
  - b) Agreement No. 24-31-121-00 to GUIDA;
  - c) Agreement No. 24-31-122-00 to Mark Thomas and Company, Inc.;
  - d) Agreement No. 24-31-123-00 to Psomas;
- 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 contractors under the terms of the agreements.

**6O. FISCAL YEAR 2024/25 STATE OF GOOD REPAIR PROGRAM ALLOCATIONS**

*Page 791*

**Overview**

This item is for the Commission to:

- 1) Approve Resolution No. 24-008, *“Resolution of the Riverside County Transportation Commission Approving the FY 2024/25 Project List for the California State of Good Repair Program;”*
- 2) Approve an allocation of \$5,007,660 related to Fiscal Year (FY) 2024/25 State of Good Repair (SGR) program funds to eligible Riverside County transit operators;

- 3) Approve an increase of \$296,643 in the FY 2024/25 budget for SGR revenues to reflect updated SCO estimates;
- 4) Authorize the Executive Director, or designee, to review, approve and submit projects to Caltrans which are consistent with SGR program guidelines and to execute and submit required documents for the SGR program, including the Authorized Agent Form; and
- 5) Authorize the Executive Director, or designee, to approve administrative amendments to the FY 2024/25 Short Range Transit Plans (SRTPs) for incorporation of the SGR funds, as necessary.

**7. PROJECT STUDY REPORT-PROJECT DEVELOPMENT SUPPORT FOR THE NORTH MAIN CORONA TRANSIT CONNECTOR PROJECT**

*Page 796*

**Overview**

This item is for the Commission to:

- 1) Approve Agreement No. 25-31-009-00 with California Department of Transportation (Caltrans) for quality management services in support of a Project Study Report-Project Development Support (PSR-PDS) for the North Main Corona Transit Connector Project (Project) in the amount not to exceed \$300,000;
- 2) Award Agreement No. 25-31-010-00 with Jacobs Engineering Group Inc. (Jacobs) for the completion of the PSR-PDS for the Project for a one-year term in the amount of \$726,343 plus a contingency amount of \$73,657, for a total amount not to exceed \$800,000;
- 3) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements on behalf of the Commission;
- 4) Authorize the Executive Director or designee to approve contingency work up to the total amount not to exceed as required for the Project; and
- 5) Approve a Fiscal Year (FY) 2024/25 budget adjustment of \$1,100,000 of Local Transportation Funds (LTF) for both revenue and expenses related to the Project.

**8. COOPERATIVE AGREEMENT WITH THE PALO VERDE VALLEY TRANSIT AGENCY FOR THE BUS MAINTENANCE FACILITY EXPANSION AND HYDROGEN FUELING STATION PROJECT**

*Page 852*

**Overview**

This item is for the Commission to:

- 1) Approve the draft Cooperative Agreement No. 24-62-099-00, with the Palo Verde Valley Transit Agency (PVVTA) for the Bus Maintenance Facility Expansion and Hydrogen Fueling Station Project (Project) in an amount not to exceed \$16,429,000;
- 2) Authorize Commission staff to serve as the lead agency on behalf of the PVVTA, as stated in the terms of Cooperative Agreement No. 24-62-099-00;
- 3) Authorize the Executive Director, pursuant to legal counsel review, to finalize negotiations with the PVVTA and execute the agreement;

- 4) Authorize the Executive Director, pursuant to legal counsel review, to execute future non-funding agreements and/or amendments on behalf of the Commission; and
- 5) Authorize the Executive Director, pursuant to legal counsel review, to acquire required parcels for the Project in accordance with the Commission's Right of Way Policies and Procedures Manual.

**9. INTERSTATE 15 SMART FREEWAY PILOT PROJECT CONSTRUCTION AGREEMENT WITH GRANITE CONSTRUCTION COMPANY INC.**

*Page 865*

**Overview**

This item is for the Commission to:

- 1) Find the bids submitted by All American Asphalt, Inc. and Beador Construction Company, Inc. nonresponsive and award Agreement No. 24-31-054-00 to Granite Construction Company (Granite) to construct the Interstate 15 SMART Freeway Pilot Project (Project), in the amount of \$13,861,000 plus a contingency amount of \$1,940,540, for a total not to exceed amount of \$15,801,540;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to finalize and execute the Agreement on behalf of the Commission; and
- 3) Authorize the Executive Director, or designee, to approve contingency work as may be required for the Project.

**10. AGREEMENTS FOR WSP USA, INC. FOR INTELLIGENT TRANSPORTATION SYSTEM OPERATIONS SUPPORT AND TRANSMAX SOFTWARE AS A SERVICE FOR THE INTERSTATE 15 SMART FREEWAY PILOT PROJECT**

*Page 898*

**Overview**

This item is for the Commission to:

- 1) Award Agreement No. 23-031-034-00 to Transmax for Software as a Service (SaaS) for the Interstate 15 SMART Freeway Pilot Project (Project) for a two-year term, in the amount of \$3,100,961 plus a contingency of \$376,536 for a total amount not to exceed of \$3,477,497;
- 2) Award Agreement No. 23-31-044-00 to WSP USA, Inc. (WSP) for Intelligent Transportation System (ITS) Operations support for the Project for a three-year term, in the amount of \$1,506,914 plus a contingency amount of \$150,691 for a total amount not to exceed \$1,657,605;
- 3) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements on behalf of the Commission;
- 4) Authorize the Executive Director, or designee, to approve contingency work as may be required for the Project; and
- 5) Authorize the Executive Director, or designee, pursuant to legal counsel review, to execute non-funding amendments to the agreements on behalf of the Commission.

**11. MEASURE A SPECIALIZED TRANSIT AWARD RECOMMENDATIONS FOR FISCAL YEARS 2024/25 – 2026/27 AMENDMENT 1**

*Page 1006*

***Overview***

This item is for the Commission to:

- 1) Approve Amendment 1 of additional awards totaling \$978,346 to the Western Riverside County Measure A Specialized Transit Program Fiscal Years (FY) 2024/25 – 2026/27 Call for Projects, for a total program amount of \$10,923,595;
- 2) Direct staff to prepare contract agreements outlining the project scope, schedules, and local funding commitments with Care Connexus for an amount not to exceed \$644,384 and United States Veterans Initiative (U.S. Vets) for an amount not to exceed \$333,962; and
- 3) Authorize the Chair or Executive Director to execute the agreements with the award recipients, pursuant to legal counsel review.

**12. ITEM(S) PULLED FROM CONSENT CALENDAR AGENDA**

**13. EXECUTIVE DIRECTOR REPORT**

**14. COMMISSIONER COMMENTS**

***Overview***

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

**15. ADJOURNMENT**

The next Commission meeting is scheduled to be held at 9:30 a.m. on **Wednesday, October 9, 2024.**



# **AGENDA ITEM 6A**

## **MINUTES**



# **RIVERSIDE COUNTY TRANSPORTATION COMMISSION**

## **MEETING MINUTES**

Wednesday, July 10, 2024

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

The Riverside County Transportation Commission was called to order by Chair Lloyd White at 9:30 a.m. in the Board Room at the County of Riverside Administrative Center, 4080 Lemon Street, First Floor, Riverside, California, 92501. For public comment visit <https://rivco.org/constituent-speaking-request> to complete a speaker slip.

### **2. ROLL CALL**

#### **Commissioners/Alternates Present**

Brian Berkson  
Ulises Cabrera  
Chuck Conder  
Kathleen Fitzpatrick  
Yxstian Gutierrez  
Berwin Hanna  
David Happe\*  
Jan Harnik  
Kurt Heidelberg  
Kevin Jeffries  
Linda Krupa  
Clint Lorimore  
Bob Magee  
Scott Matas  
Lisa Middleton  
Linda Molina

Joseph Morabito  
V. Manuel Perez  
Dana Reed  
Jeremy Smith  
Karen Spiegel  
Wes Speake  
James Stewart  
Valerie Vandever  
Michael M. Vargas  
Cindy Warren  
Chuck Washington  
Bill Zimmerman  
Lloyd White

#### **Commissioners Absent**

Joseph DeConinck  
Waymond Fermon  
Raymond Gregory  
Steven Hernandez  
Meg Marker

\*Arrived after the meeting was called to order.

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

Chair White led the Commission 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.

At this time, Commissioners Kevin Jeffries and V. Manuel Perez joined the meeting

**6. CONSENT CALENDAR**

**M/S/C (Berkson/Spiegel) to approve the following Consent Calendar items.  
Middleton: Abstained**

**6A. APPROVAL OF MINUTES – JUNE 12, 2024**

**6B. MONTHLY INVESTMENT REPORT**

- 1) Receive and file the Monthly Investment Report for the month ended May 31, 2024.

**6C. STATE AND FEDERAL LEGISLATIVE UPDATE**

- 1) Receive and file a state and federal legislative update.

**6D. EXPRESS LANES ROAD PAVEMENT ANALYSIS SERVICES**

- 1) Award Agreement No. 24-31-088-00 to Kimley-Horn and Associates for Express Lanes Road Pavement Analysis Services for a six-year term in the amount of \$1,072,613 plus a contingency in the amount of \$107,261, for a not to exceed amount of \$1,179,874; and
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement on behalf of the Commission.

**6E. 91 EXPRESS LANES OCCUPANCY DETECTION SYSTEM CHANGE ORDER AND RESOLUTION FOR OCCUPANCY CORRECTION FEE**

- 1) Authorize Change Order No. 036 to the Kapsch TrafficCom Agreement No. 16-31-043-00 for installation, operations and maintenance of the lane system Occupancy Detection System (ODS) in the amount of \$7,788,289;
- 2) Authorize Change Order No. 07 to the Cofiroute USA Agreement No. 19-31-059-00 for the enforcement of the Occupancy Detection System in an amount not to exceed \$642,953; and
- 3) Adopt Resolution No. 24-004, *“Regarding the Revised 91 Express Lanes Transponder and Customer Account Plan Fee Policies.”*

**6F. DEPARTMENT OF CALIFORNIA HIGHWAY PATROL AGREEMENT FOR EXPRESS LANES ENFORCEMENT**

- 1) Approve Agreement No. 24-31-082-00 with the Department of California Highway Patrol (CHP) for enforcement on the express lanes for six-year term in the amount of \$9,000,000; and
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement on behalf of the Commission.

**6G. 2024 STATE ROUTE 91 IMPLEMENTATION PLAN**

- 1) Approve the 2024 State Route 91 Implementation Plan.

At this time, Commissioner Chuck Conder joined the meeting.

**7. SENATE BILL 125 FORMULA-BASED FUNDING FOR THE TRANSIT AND INTERCITY RAIL CAPITAL PROGRAM AND ZERO-EMISSION TRANSIT CAPITAL PROGRAM**

Jillian Guizado, Planning and Programming Director, presented the SB 125 Formula-Based Funding for the Transit and Intercity Rail Capital Program (TIRCP) and the Zero-Emission Transit Capital Program (ZETCP), highlighting the following areas:

- SB 125 background and objectives
- SB 125 process
- SB 125 RCTC available funding
- Zero Emission and Transit Capital Projects
- A map of the Zero Emission and Transit Projects
- Western Riverside County Rail Capital improvements
- Years 2 – 5 distribution of funds
- Total distribution of funds by subregion (Years 1 – 5)

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

- 1) **Approve the funding recommendations for the Senate Bill 125 (SB 125) Formula-Based Funding for the Transit and Intercity Rail Capital Program (TIRCP) and Zero-Emission Transit Capital Program (ZETCP) apportionments for Fiscal Years (FYs) 2024/25 - 2027/28, contingent upon the adopted state budget, availability of funds, and eligibility by fund type;**
- 2) **Direct staff to prepare and execute funding agreements with the project sponsors outlining the project scope, schedule, and local funding commitments; and**

**3) Authorize the Executive Director to execute the funding agreements with the project sponsors, pursuant to legal counsel review.**

At this time, Commissioner David Happe joined the meeting.

Chair White announced staff requested to present both Agenda Item 8, *“Presentation of Ordinance and Expenditure Plan”* and Agenda Item 9, *“2024 Traffic Relief Plan Public Outreach Summary”* together.

**8. PRESENTATION OF ORDINANCE AND EXPENDITURE PLAN**

David Knudsen, Deputy Executive Director, presented the ordinance, expenditure plan, and the public outreach summary on the adopted 2024 Traffic Relief Plan (TRP) and funding options, highlighting the following areas:

- Developing an ordinance and expenditure plan
- Legislative changes to ACA 1
- Requirements for the ordinance and expenditure plan
- Regional funding for TRP investment categories
- Western County, Coachella Valley, and Palo Verde Valley distribution of funds
- Traffic Relief Infrastructure Improvement Plan (TRIIP) requirements
- Public outreach phase 2 summary: April – June 2024
- Public outreach achieved goals
- Public survey results
- Vote progression countywide 1-cent Riverside County Transportation Sales Tax Measure 2023 (2/3 threshold); 2024 (May – ACA 1 ready); and 2024 (June – 2/3 threshold)
- Public opinion survey conclusion

Lisa Mobley, Administrative Services Director/Clerk of the Board, announced that a written comment was received by Brad Anderson, city of Rancho Mirage resident, and a copy was distributed to the Commissioners at the dais.

Aaron Hake stated this is a remarkable milestone as it demonstrates their leadership and their vision for the region’s transportation system. He recognized the Commissioner’s constituents who have provided input and feedback that will continue to shape RCTC’s plans and projects going forward. He thanked RCTC staff who have worked at every level and Coachella Valley Association of Governments (CVAG) staff who have worked with RCTC over the past 18 months. The TRP will be their vision of what they aim to achieve at RCTC and when they are able to secure local funding in the future, they already have the blueprint and the framework for that. Timing is everything; they cannot confidently state two-thirds of the voters in this county will vote for a measure this year so now is not the time to put this on the ballot. Staff will come back to the Commission when the next

opportunity is available and look to the Commissioners' leadership and direction. Staff will continue to pursue every funding opportunity at the federal and state level look to maximize Measure A funds and put that to best use and he looks forward to the Commissioner's comments.

Chair White stated he is proud of the significant strides they have made as a Commission and the leadership and thoughtful discussions they have had in their meetings has been instrumental getting the Commission to this point. He expressed gratitude for having several public discussions to seek local voter approved funding, keeping the needs of the residents at the top of mind. RCTC's TRP demonstrates their commitment to address transportation issues, the TRP shows they are listening to their residents to reduce traffic congestion, invest in public transportation, fill potholes, and respond to natural disasters keeping their roads safe. Now is not the time to seek voter approval on a new measure, but the time is coming soon. He supports the Projects and Funding Strategies Ad Hoc Committee recommendation and emphasized that they must remain proactive and continue their advocacy, be creative, and this Commission must be prepared to seek voter approval at the next strategic opportunity.

Commissioner Chuck Conder thanked David Knudsen for the presentation and stated he cannot comprehend the number of hours and hard work this staff has put into the TRP. The Commissioners are going to continue to take phone calls from residents complaining about traffic and all the issues that the TRP would have solved. It is an education process; they owe a lot of thanks to all the staff that worked on this and now is the time to wait but education must happen. He thanked everybody and stated there is a possibility for a measure in 2026 and be able to spend two years to educate people on why they need this. He then moved staff recommendation.

Chair White seconded the motion.

**M/S/C (Conder/White) to:**

- 1) Review, discuss, and consider an ordinance and related resolution adopting a transactions and use tax (sales tax) at the rate of one percent (1%) to fund transportation improvements, an accompanying expenditure plan directing the spending of revenues generated from said tax measure, and a Resolution placing it on the 2024 General Election ballot;**
- 2) Review, discuss, and consider an ordinance adopting technical provisions for the collection and administration of a transactions and use tax (sales tax) at the rate of one percent (1%) by the California Department of Tax and Fee Administration to fund transportation improvements, programs and services; and**

- 3) **Review and adopt the recommendation of the Projects and Funding Strategies Ad Hoc Committee to not seek voter approval for a new transportation sales tax measure in the November 2024 General Election.**

**9. 2024 TRAFFIC RELIEF PLAN PUBLIC OUTREACH SUMMARY**

**M/S/C to:**

- 1) **Receive and file the public outreach and engagement summary of the Traffic Relief Plan and data from the recent public opinion survey.**

**10. ITEM(S) PULLED FROM CONSENT CALENDAR FOR DISCUSSION**

There were no items pulled from the Consent Calendar.

**11. EXECUTIVE DIRECTOR'S REPORT**

Aaron Hake announced:

- Public outreach has started for the upcoming full nighttime closures beginning Monday, July 15 the 71/91 Interchange project will close the eastbound 91 between Green River Road and Serfas Club Drive from 11:00 p.m. to 5:00 a.m. The closures will occur Monday – Wednesday through August 14, 2024. The closures are needed to allow crews to safely remove the support structures currently on the bridge being built over the 91. RCTC is encouraging motorists to take regional detours on State Routes 57 and 60, and Interstate 15. This information is also posted on [rctc.org/7191closures/](http://rctc.org/7191closures/).

In response to Commissioner Dana Reed's clarification if both Agenda Items 8 and 9 were together, Aaron Hake replied they were presented together.

**12. COMMISSIONER COMMENTS**

- 12A. Commissioner Wes Speake thanked everybody that is involved on the 71/91 Interchange project. There was a full closure on Monday, and he heard nothing from folks only just a few people who had heard about it and avoided it. He thanked staff for the good planning and for coordinating with the city.

Aaron Hake announced that the Commission will be dark in August 2024. The regular committee meetings will commence on August 26, 2024.



**13. CLOSED SESSION**

**13A. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: One case

There were no announcements for the Closed Session item.

**14. ADJOURNMENT**

There being no further business for consideration by the Riverside County Transportation Commission, Chair White adjourned the meeting at 10:24 a.m. The next Commission meeting is scheduled to be held on Wednesday, August 14, 2024.

Respectfully submitted,



Lisa Mobley  
Administrative Services Director /  
Clerk of the Board



# **AGENDA ITEM 6B**



| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |  |
|---|--|
| <b>DATE:</b>                                      | September 11, 2024   |
| <b>TO:</b>  | Riverside County Transportation Commission   |
| <b>FROM:</b>                                      | Jose Mendoza, Procurement Manager<br>Matthew Wallace, Deputy Director of Administrative Services |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director   |
| <b>SUBJECT:</b>                                   | Single Signature Authority Report  |

**STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Receive and file the Single Signature Authority report for the fourth quarter ended June 30, 2024.

**BACKGROUND INFORMATION:**

Certain contracts are executed under single signature authority as permitted in the Commission’s Procurement Policy Manual adopted in March 2021. The Executive Director is authorized to sign services contracts that are less than \$250,000 individually and in an aggregate amount not to exceed \$2 million in any given fiscal year. Additionally, in accordance with Public Utilities Code Section 130323(c), the Executive Director is authorized to sign contracts for supplies, equipment, materials, and construction of all facilities and works under \$50,000 individually.

The attached report details all contracts that have been executed for the fourth quarter ended June 30, 2024, under the single signature authority granted to the Executive Director. The unused capacity of single signature authority for services as of June 30, 2024, is \$1,013,708.

Attachment: Single Signature Authority Report as of June 30, 2024



**SINGLE SIGNATURE AUTHORITY  
AS OF June 30, 2024**

| CONTRACT #   | CONSULTANT                                    | DESCRIPTION OF SERVICES  | ORIGINAL CONTRACT AMOUNT | PAID AMOUNT | REMAINING CONTRACT AMOUNT |
|--|---|--|--------------------------|-------------|---------------------------|
|  | AMOUNT AVAILABLE July 1, 2023                 |  | \$2,000,000.00           |             |                           |
| 23-18-071-00   | Koff and Associates                           | Classification & Compensation Study  | 10,000.00                | 0.00        | 10,000.00                 |
| 23-18-111-00   | County of Riverside                           | Memorandum of Understanding for Riverside County Talent domain   | 15,000.00                | 0.00        | 15,000.00                 |
| 24-31-003-00   | Center for Natural Land Management            | PAR for the San Timoteo and Sweeney Easement and Endowment Oversight   | 21,000.00                | 11,179.71   | 9,820.29                  |
| 18-19-082-03   | Tyler Technologies                            | Implementation of Munis ERP  | 75,000.00                | 0.00        | 75,000.00                 |
| 24-18-045-00   | Ralph Andersen and Associates                 | Recruitment for Deputy Executive Director  | 29,500.00                | 29,500.00   | 0.00                      |
| 24-19-048-00   | Disenhouse Law                                | Retainer Agreement   | 30,000.00                | 0.00        | 30,000.00                 |
| 22-31-057-01   | Psomas  | On-Call Right of Way Engineering and Surveying Services  | 250,000.00               | 182,437.11  | 67,562.89                 |
| 24-25-078-00   | Orange County Transportation Authority (OCTA) | MOU to share the professional consulting cost between OCTA and RCTC needed to review SCRRA for compliance with FTA requirements          | 40,000.00                | 0.00        | 40,000.00                 |
| 22-19-093-01   | DebtBook                                      | Software license agreement related to Leases (GASB 87) and Debt Management Software  | 50,100.00                | 800.00      | 49,300.00                 |
| 18-31-164-05   | Falcon  | Construction Management, materials testing, construction surveying and environmental monitoring services for SR-60 Truck climbing lantes | 167,000.00               | 0.00        | 167,000.00                |
| 24-15-032-01   | Alpha Vu                                      | Public Engagement and Outreach Program   | 232,000.00               | 0.00        | 232,000.00                |
| 24-31-119-00   | Inland Empire Resource Conservation District  | Deposit Agreement for SR-91 Capital Improvement Project Habitat Restoration in Chino Hills State Park                                    | 25,000.00                | 25,000.00   | 0.00                      |
| PO 3507  | Riverside Volkswagen                          | Electric Vehicle Purchase for Toll Operations (Volkswagen ID.4)  | 41,692.26                | 41,692.26   | 0.00                      |
|  | AMOUNT USED                                   |  | 986,292.26               |             |                           |
|  | AMOUNT REMAINING through June 30, 2024        |  | \$1,013,707.74           |             |                           |
| <u>Agreements that fall under Public Utilities Code 130323 (C)</u> |   |  |                          |             |                           |

Jose Mendoza \_\_\_\_\_ Matthew Wallace \_\_\_\_\_  
Prepared by Reviewed by

Note: Shaded area represents new contracts listed in the fourth quarter.





# **AGENDA ITEM 6C**



| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |   |
|---|---|
| <b>DATE:</b>                                      | September 11, 2024  |
| <b>TO:</b>  | Riverside County Transportation Commission  |
| <b>FROM:</b>                                      | Michele Cisneros, Deputy Director of Finance<br>Sergio Vidal, Chief Financial Officer |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director  |
| <b>SUBJECT:</b>                                   | Quarterly Sales Tax Analysis  |

**STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Receive and file the sales tax analysis for the Quarter 1, 2024 (1Q 2024).

**BACKGROUND INFORMATION:**

At its May 2023 meeting, the Commission awarded an agreement with MuniServices, an Avenu Insights and Analytics Company (MuniServices), for quarterly sales tax reporting services plus additional fees contingent on additional sales tax revenues generated from the transactions and use tax (sales tax) audit services. The services performed under this agreement pertain only to the Measure A sales tax revenues.

Since the commencement of sales tax audit services, MuniServices submitted audits, which reported findings to the California Department of Tax and Fee Administration (CDTFA), for review and determination of errors in sales tax reporting related to 1,682 business. Through 4Q 2023, the CDTFA approved \$17,794,326 of cumulative sales tax revenues recovered for the Commission. If CDTFA concurs with the error(s) for the remaining findings, the Commission will receive additional revenues; however, the magnitude of the value of the remaining findings is not available. It is important to note that while the recoveries of additional revenues will be tangible, it will not be sufficient to alter the overall trend of sales tax revenues.

MuniServices provided the Commission with the Quarterly Sales Tax Digest Summary report for 1Q 2024. Most of the 1Q 2024 Measure A sales tax revenues were received in the second quarter of calendar year 2024, during March 2024 through May 2024, due to a lag in the sales tax calendar. The summary section of the 1Q 2024 report is attached and includes an overview of California’s economic outlook, local results, historical cash collections analysis by quarter, top 25 sales/use tax contributors, historical sales tax amounts, annual sales tax by business category, and five-year economic trend (general retail).

Taxable transactions for the top 25 contributors in Riverside County generated 26.6 percent of taxable sales for the benchmark year ended 1Q 2024, slightly higher than the benchmark year ended 1Q 2023 at 26.1 percent. The top 100 sales tax contributors generated 40.6 percent for the benchmark year ended 1Q 2024, higher than the 39.3 percent for the benchmark year ended 1Q 2023.

In the Economic Category Analysis below, two (food products and miscellaneous) of the six categories experienced new highs in the 1Q 2024 benchmark year compared to the prior eight benchmark years. Four of the six categories (general retail, transportation, construction, and business to business) are reflective of lows in the 1Q 2024 benchmark year primarily due to decreases in brick-and-mortar retail sales, auto sales, service stations, and solar equipment sales.

| ECONOMIC CATEGORY ANALYSIS  |                     |                     |                     |                     |                     |                     |                     |                     |                     |
|-----------------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| % of Total / % Change       | RCTC                | State Wide          | Orange County       | Riverside County    | S.F. Bay Area       | Sacramento Valley   | Central Valley      | South Coast         | North Coast         |
| <b>General Retail</b>       | 28.8 / -0.9         | 28.9 / -1.4         | 27.2 / -0.6         | 34.7 / -0.4         | 26.0 / -4.1         | 28.2 / -2.2         | 37.8 / 0.4          | 27.1 / 0.1          | 27.3 / 3.2          |
| <b>Food Products</b>        | 16.9 / 0.3          | 21.2 / -0.6         | 21.2 / 2.2          | 17.9 / -0.6         | 22.4 / -0.2         | 16.8 / -1.7         | 14.6 / -4.1         | 23.3 / 1.0          | 18.3 / 1.5          |
| <b>Transportation</b>       | 22.7 / -8.2         | 23.3 / -7.5         | 24.8 / -3.6         | 23.6 / -3.9         | 19.4 / -4.8         | 27.0 / -4.7         | 22.3 / -8.2         | 24.2 / -6.3         | 28.7 / -5.1         |
| <b>Construction</b>         | 11.0 / -0.7         | 9.8 / -4.0          | 8.3 / 0.2           | 12.7 / -0.8         | 9.8 / -8.6          | 12.6 / -5.4         | 9.8 / -7.3          | 8.9 / -0.2          | 14.4 / -0.5         |
| <b>Business to Business</b> | 15.8 / -4.4         | 15.8 / -6.3         | 17.5 / -6.0         | 10.6 / -4.1         | 21.2 / -2.9         | 14.2 / -7.1         | 14.7 / -7.3         | 15.4 / -6.0         | 10.4 / 0.7          |
| <b>Miscellaneous</b>        | 4.8 / 8.6           | 1.0 / -2.8          | 1.1 / 9.2           | 0.6 / -7.4          | 1.2 / 3.6           | 1.1 / 6.8           | 0.7 / -13.0         | 1.1 / -1.6          | 0.9 / -9.4          |
| <b>Total</b>                | <b>100.0 / -2.6</b> | <b>100.0 / -3.8</b> | <b>100.0 / -1.6</b> | <b>100.0 / -1.8</b> | <b>100.0 / -3.5</b> | <b>100.0 / -3.9</b> | <b>100.0 / -4.3</b> | <b>100.0 / -2.3</b> | <b>100.0 / -0.5</b> |

General Retail: Apparel Stores, Department Stores, Furniture/Appliances, Drug Stores, Recreation Products, Florist/Nursery, and Misc. Retail  
 Food Products: Restaurants, Food Markets, Liquor Stores, and Food Processing Equipment  
 Construction: Building Materials Retail and Building Materials Wholesale  
 Transportation: Auto Parts/Repair, Auto Sales - New, Auto Sales - Used, Service Stations, and Misc. Vehicle Sales  
 Business to Business: Office Equip., Electronic Equip., Business Services, Energy Sales, Chemical Products, Heavy Industry, Light Industry, Leasing, Biotechnology, I.T. Infrastructure, and Green Energy  
 Miscellaneous: Health & Government, Miscellaneous Other, and Closed Account Adjustments

An analysis of sales tax performance through 1Q 2024 is attached and illustrates consistent cycles for sales tax performance for most of the economic categories since 1Q 2019, aside from COVID-19 impacts for some categories.

For four of the top 10 economic segments (miscellaneous retail, restaurants, building materials – wholesale, and heavy industry) during the past eight benchmark year quarters, sales tax reached a new high point in 1Q 2024. These four segments represent 34.8 percent of the top 10 economic segments totaling 73.8 percent of total sales tax receipts. For the other remaining 21 economic segments representing 26.2 percent of total sales tax receipts, five segments representing 4.6 percent reached new high points in the benchmark year 1Q 2024.

In the Economic Segment Analysis below, miscellaneous retail, which includes online retailers, is the Commission’s largest economic segment, followed by restaurants and auto sales – new. Since the benchmark year 1Q 2017, each of these segments has realized significant sales tax growth. Miscellaneous retail has increased 144 percent, restaurants has increased 53 percent, and auto sales – new has increased 46 percent since 1Q 2017. The increase related to online sales is primarily due to legislation to tax online sales along with general consumer spending shifting from brick-and-mortar establishments to online sales. Additionally, restaurants and

auto sales – new have also increased since 1Q 2017 due to general price increases due to inflation and/or consumer demand.

| ECONOMIC SEGMENT ANALYSIS |                      |                      |                      |                      |                      |                      |                      |                      |                   |
|---------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|-------------------|
|                           | RCTC                 | State Wide           | Orange County        | Riverside County     | S.F. Bay Area        | Sacramento Valley    | Central Valley       | South Coast          | North Coast       |
| Largest Segment           | Miscellaneous Retail | Restaurants          | Restaurants          | Miscellaneous Retail | Restaurants          | Auto Sales - New     | Miscellaneous Retail | Restaurants          | Restaurants       |
| % of Total / % Change     | 11.9 / 0.6           | 15.3 / 0.7           | 15.8 / 3.8           | 17.5 / 2.1           | 16.7 / 0.8           | 11.6 / -0.2          | 15.9 / 13.5          | 17.2 / 2.1           | 11.7 / 2.9        |
| 2nd Largest Segment       | Restaurants          | Auto Sales - New     | Auto Sales - New     | Restaurants          | Miscellaneous Retail | Restaurants          | Department Stores    | Auto Sales - New     | Department Stores |
| % of Total / % Change     | 10.9 / 2.0           | 11.1 / -5.5          | 14.1 / -3.2          | 11.6 / 2.0           | 9.7 / -1.2           | 11.6 / -0.9          | 10.9 / -5.5          | 12.3 / -5.7          | 11.3 / 17.5       |
| 3rd Largest Segment       | Auto Sales - New     | Miscellaneous Retail | Miscellaneous Retail | Auto Sales - New     | Auto Sales - New     | Miscellaneous Retail | Restaurants          | Miscellaneous Retail | Auto Sales - New  |
| % of Total / % Change     | 10.9 / -7.1          | 10.8 / 6.0           | 9.5 / 7.3            | 10.9 / -0.9          | 9.4 / -3.5           | 11.0 / 1.0           | 9.8 / -2.7           | 9.0 / 9.4            | 11.1 / -1.2       |

Information regarding sales tax comparison by city and change in economic segments (two highest gains and two highest declines) for 1Q 2024 to 1Q 2023 is attached.

Staff will monitor sales tax receipts and other available economic data to determine the need for any adjustments to the revenue projections. Staff will utilize the forecast scenarios with the complete report and receipt trends in assessing such projections.

**FISCAL IMPACT:**

This is an information item. There is no fiscal impact.

Attachments:

- 1) Sales Tax Digest Summary 1Q 2024
- 2) Sales Tax Performance Analysis by Quarter 1Q 2024
- 3) Quarterly Sales Tax Comparison by City for 1Q 2023 to 1Q 2024



# Riverside County Transportation Commission Sales Tax Digest Summary

## Collections through May 2024 Sales through March 2024 (2024Q1)

### CALIFORNIA'S ECONOMIC OUTLOOK

California sales tax receipts increased by 0.7% over the same quarter from the previous year for Q1 of 2024, with Northern California reporting a stagnant 0.0% change compared to a 1.2% increase for Southern California. Receipts for the RCTC decreased by 0.6% over the same period.

Real Gross Domestic Product (GDP) increased at an annual rate of 3.5% in the first quarter of 2024. U.S. inflation increased to 3.5% in March of 2024, up 0.3 percentage point from February of 2024. California's headline inflation decreased to 3.3% year over year as of February of 2024, down from 3.5% in December of 2023. (DIR, BEA, BLS, April Finance Bulletin)

The U.S. unemployment rate increased slightly to 3.8% in March of 2024. California's unemployment rate increased slightly to 5.3% in March of 2024, 1.2 percentage point higher than November of 2022 rate of 4.1%. (EDD, BLS, April Finance Bulletin)

U.S. personal income increased by 4.8% for the first quarter of 2024, compared to same quarter previous year. Compensation of employees increased by 5.6%, while personal current taxes increased by 8.0% from the previous period, resulting in a net gain of 4.4% in disposable income. The increase in personal outlays such as personal consumption and expenditures (PCE), personal interest payments, and personal current transfer payments resulted in a decrease of 20.3% in US personal savings for the first quarter of 2024, compared to same quarter previous year. (BEA)

### LOCAL RESULTS

#### Net Cash Receipts Analysis

|                              |              |
|------------------------------|--------------|
| Local Collections            | \$69,060,946 |
| Less: Cost of Administration | \$(430,910)  |
| Net 1Q2024 Receipts          | \$68,630,036 |
| Net 1Q2023 Receipts          | \$69,037,847 |
| Actual Percentage Change     | -0.6%        |

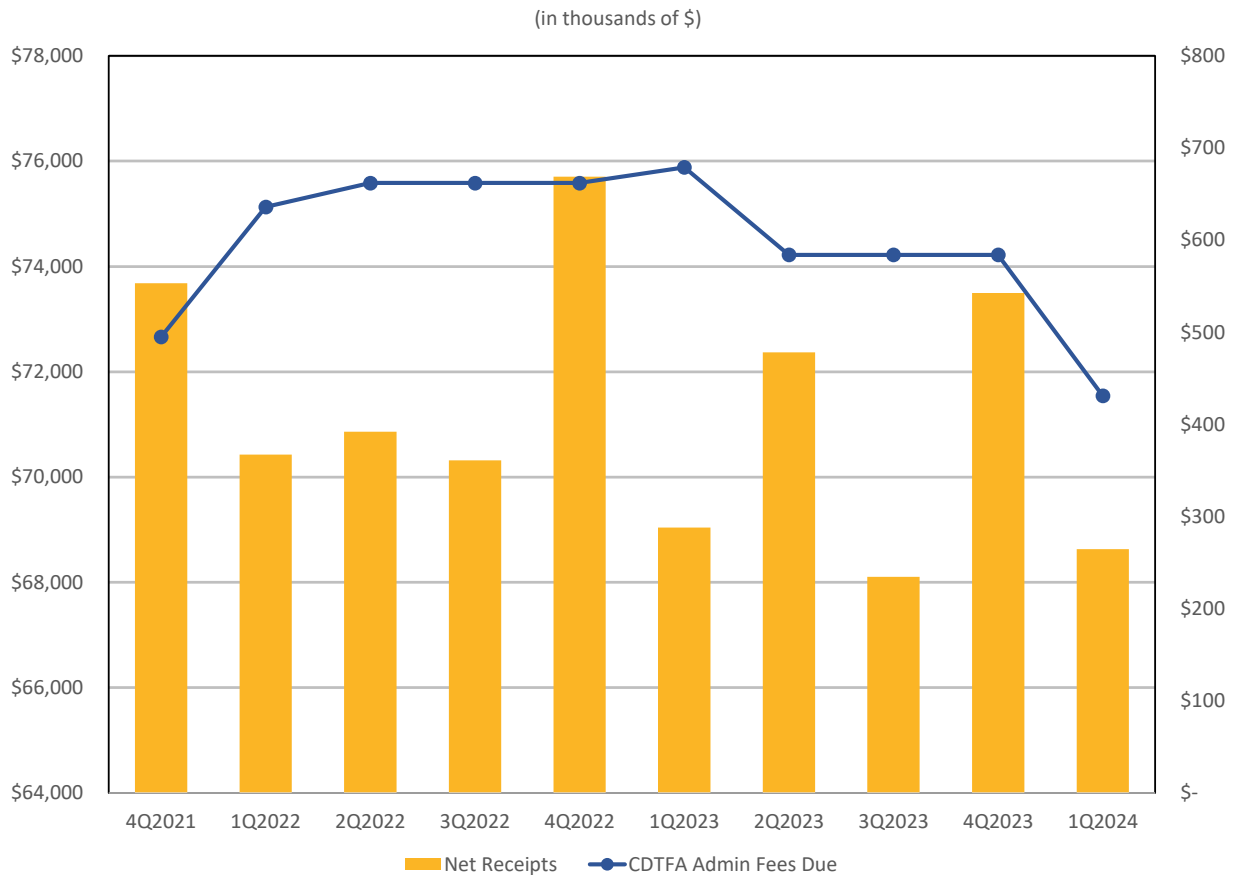
#### Business Activity Performance Analysis

|   |              |
|---|--------------|
| Local Collections – Economic Basis 1Q2024 | \$66,786,971 |
| Local Collections – Economic Basis 1Q2023 | \$68,756,153 |
| Quarter over Quarter Change               | -\$1,969,182 |
| Quarter over Quarter Percentage Change    | -2.9%        |

#### Avenu Insights & Analytics' On-Going Audit Results

|                                 |              |
|---------------------------------|--------------|
| Total Recovered Since Inception | \$17,794,326 |
|---------------------------------|--------------|

## HISTORICAL CASH COLLECTIONS ANALYSIS BY QUARTER



## TOP 25 SALES/USE TAX CONTRIBUTORS

The following list identifies RCTC’s Top 25 Sales/Use Tax contributors. The list is in alphabetical order and represents sales from April of 2023 through March 2024. The Top 25 Sales/Use Tax contributors generate 26.6% of RCTC’s total sales and use tax revenue.

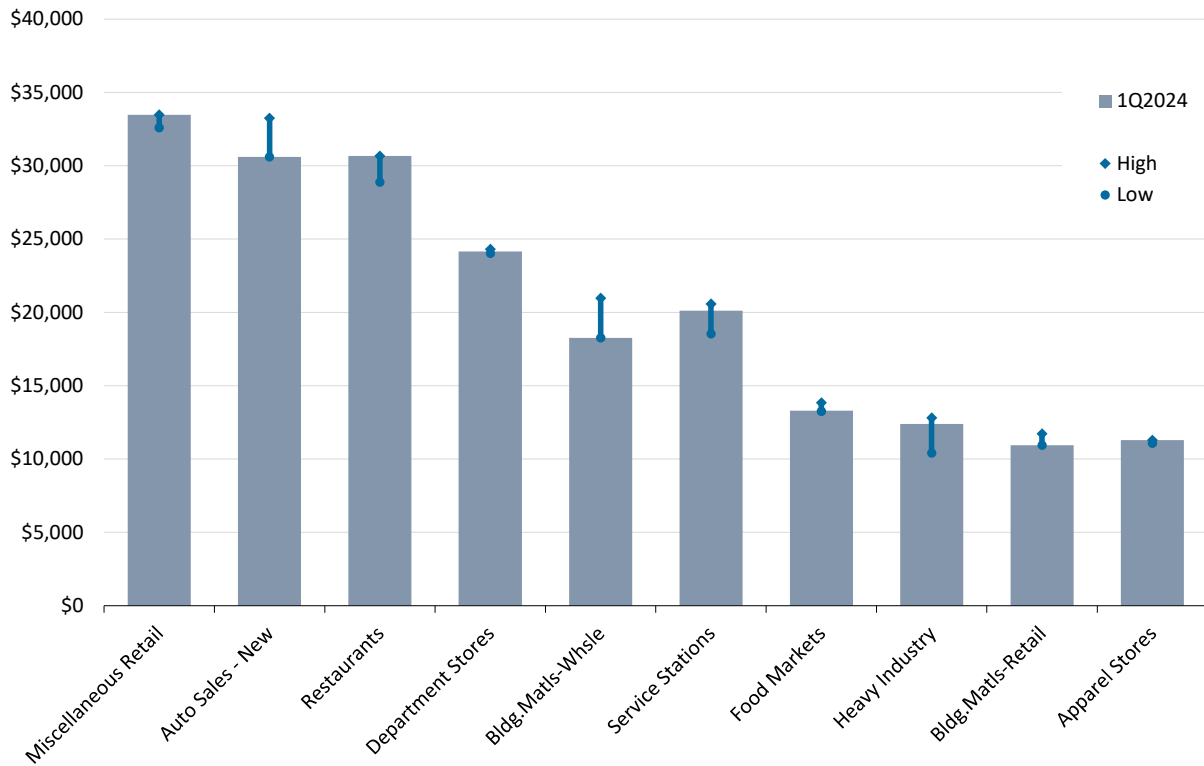
- |                              |                         |
|------------------------------|-------------------------|
| 7-ELEVEN FOOD STORES         | MCDONALD'S RESTAURANTS  |
| AMAZON.COM – EC              | NOVA POWER              |
| AMAZON.COM SERVICES – EC     | RALPH'S GROCERY COMPANY |
| ARCO AM/PM MINI MARTS        | ROBERTSONS READY MIX    |
| BEST BUY STORES              | ROSS STORES             |
| CARMAX AUTO SUPERSTORES      | SAM'S CLUB              |
| CED LIGHTING SOLUTIONS       | SHELL SERVICE STATIONS  |
| CHEVRON SERVICE STATIONS     | STATER BROS MARKETS     |
| CIRCLE K FOOD STORES         | TARGET STORES           |
| COSTCO WHOLESALE             | TESLA                   |
| DEPARTMENT OF MOTOR VEHICLES | VERIZON WIRELESS        |
| HOME DEPOT                   | WAL MART STORES         |
| LOWE'S HOME CENTERS          |                         |

\* "- EC" added to the end of business names represents electronic commerce.



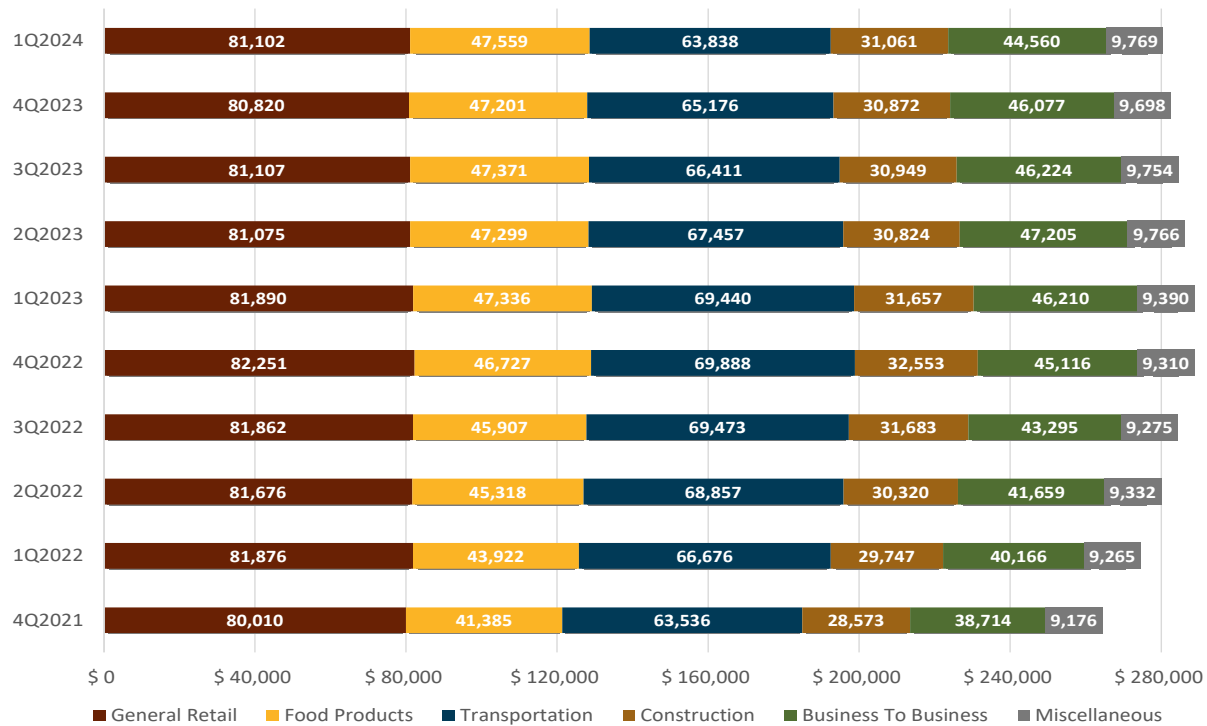
## HISTORICAL SALES TAX AMOUNTS

The following chart shows the sales tax level from annual sales through March of 2024, the highs, and the lows for the top ten segments over the last two years in thousands of \$.

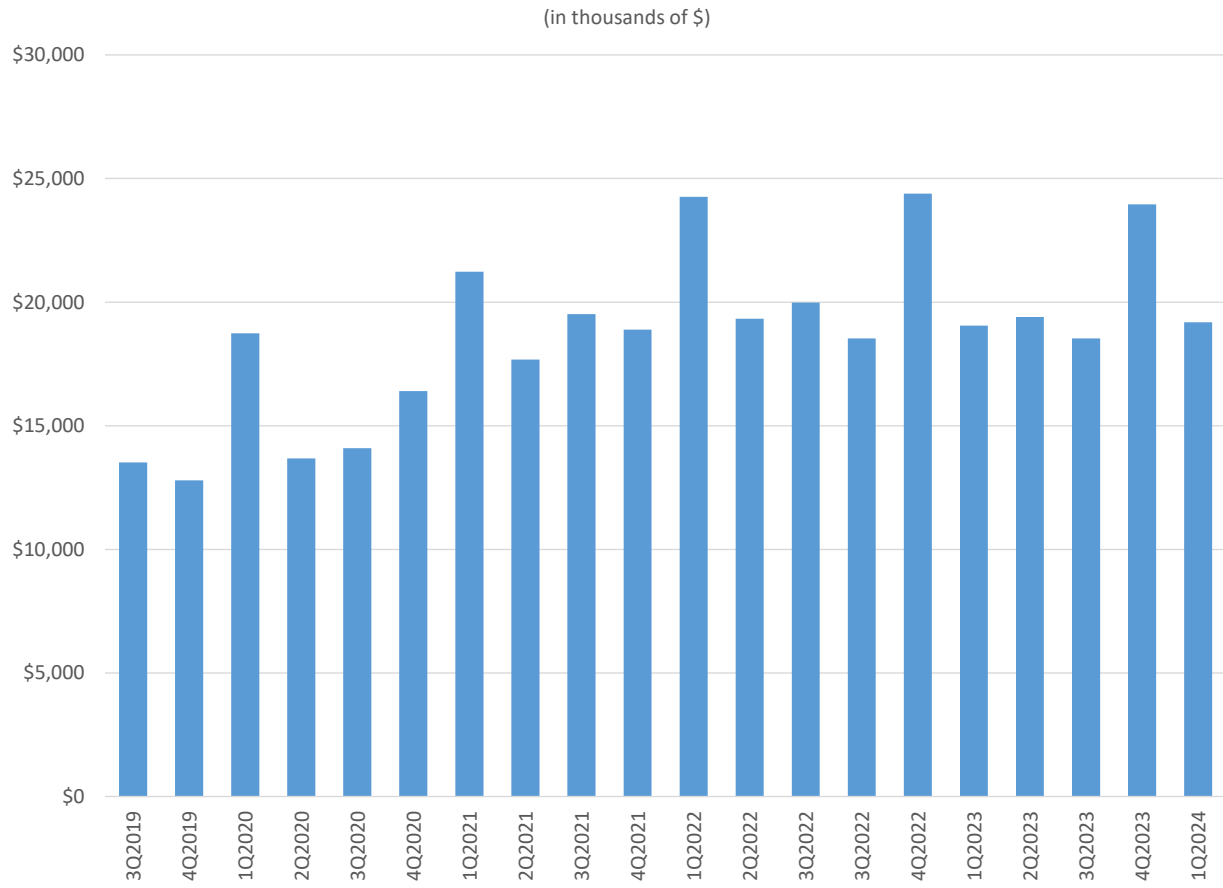


## ANNUAL SALES TAX BY BUSINESS CATEGORY

(in thousands of \$)

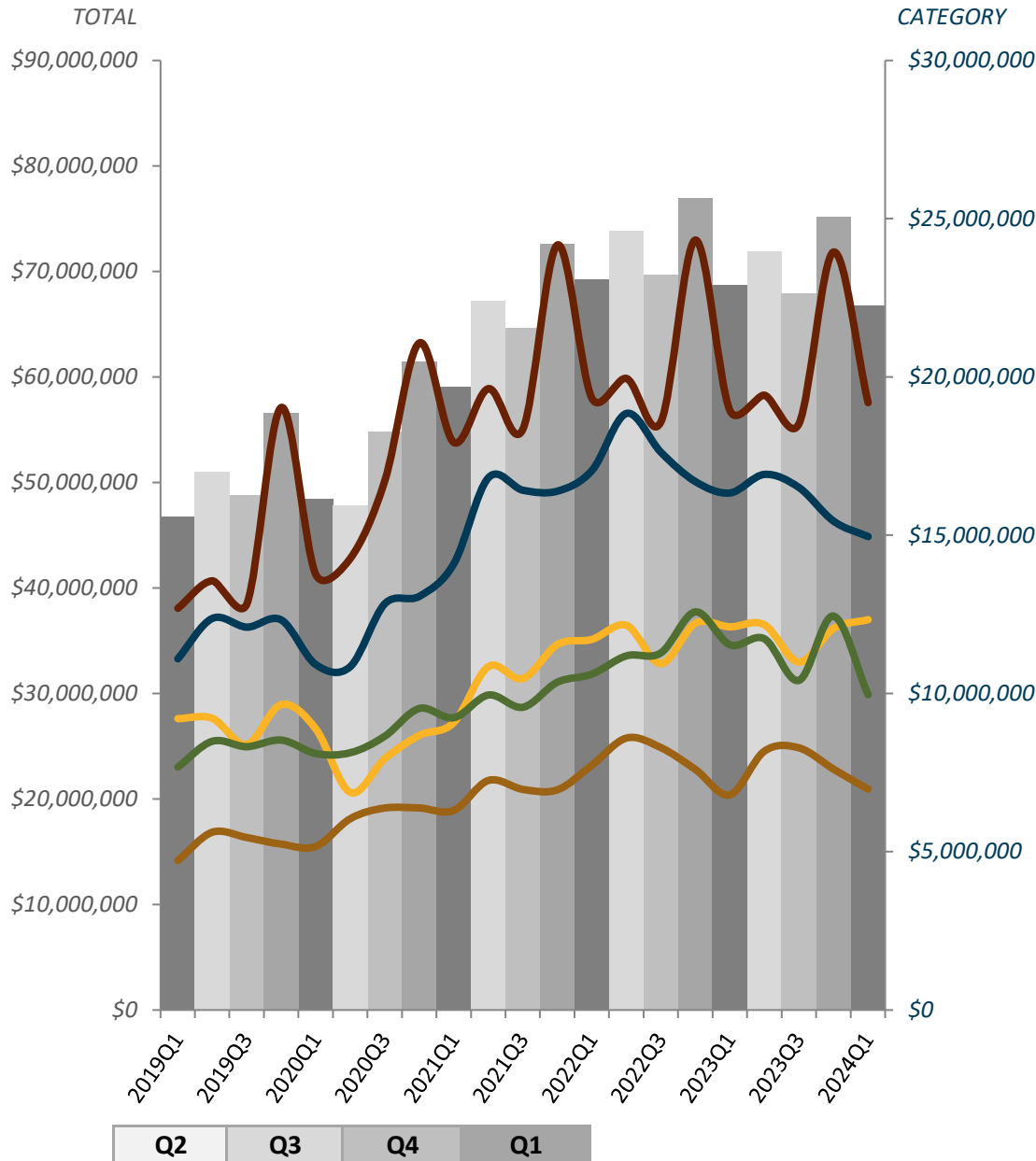


## FIVE-YEAR ECONOMIC TREND: General Retail



**TOTAL**

Economic



| TOTAL        |        |              |        |              |
|--------------|--------|--------------|--------|--------------|
| 2024Q1       | QoQ %Δ | QoQ \$Δ      | YoY %Δ | YoY \$Δ      |
| \$66,786,971 | -2.9%  | -\$1,969,182 | -2.6%  | -\$7,444,668 |

| GENERAL RETAIL     |        |           |        |            |
|--------------------|--------|-----------|--------|------------|
| 2024Q1             | QoQ %Δ | QoQ \$Δ   | YoY %Δ | YoY \$Δ    |
| \$19,190,071       | 1.3%   | \$250,389 | -0.9%  | -\$712,427 |
| % of 2024Q1 Total: |        | 28.7%     |        |            |

| FOOD PRODUCTS |        |           |        |           |
|---------------|--------|-----------|--------|-----------|
| 2024Q1        | QoQ %Δ | QoQ \$Δ   | YoY %Δ | YoY \$Δ   |
| \$12,338,833  | 1.9%   | \$229,797 | 0.3%   | \$132,440 |
| % of Total:   |        | 18.5%     |        |           |

| TRANSPORTATION |        |              |        |              |
|----------------|--------|--------------|--------|--------------|
| 2024Q1         | QoQ %Δ | QoQ \$Δ      | YoY %Δ | YoY \$Δ      |
| \$14,956,378   | -8.5%  | -\$1,382,823 | -8.2%  | -\$5,673,052 |
| % of Total:    |        | 22.4%        |        |              |

| CONSTRUCTION |        |           |        |            |
|--------------|--------|-----------|--------|------------|
| 2024Q1       | QoQ %Δ | QoQ \$Δ   | YoY %Δ | YoY \$Δ    |
| \$6,981,526  | 2.6%   | \$176,472 | -0.7%  | -\$232,440 |
| % of Total:  |        | 10.5%     |        |            |

| BUSINESS TO BUSINESS |        |              |        |              |
|----------------------|--------|--------------|--------|--------------|
| 2024Q1               | QoQ %Δ | QoQ \$Δ      | YoY %Δ | YoY \$Δ      |
| \$9,964,844          | -13.6% | -\$1,574,723 | -4.4%  | -\$2,035,927 |
| % of Total:          |        | 14.9%        |        |              |

QoQ = 24Q1 / 23Q1

YoY = YE 24Q1 / YE 23Q1



RCTC: Quarterly Comparison of 2023Q1 and 2024Q1 (January through March Sales)

|                         | General Retail | Food Products | Transportation | Construction | Business To Business | Miscellaneous | Jan - Mar 2024<br>(2024Q1) | Jan - Mar 2023<br>(2023Q1) | % Chg  | Gain                 | Gain                 | Decline              | Decline              |
|-------------------------|----------------|---------------|----------------|--------------|----------------------|---------------|----------------------------|----------------------------|--------|----------------------|----------------------|----------------------|----------------------|
| <b>RIVERSIDE COUNTY</b> |                |               |                |              |                      |               |                            |                            |        |                      |                      |                      |                      |
| BANNING                 | 15.0%          | 1.7%          | -11.8%         | -21.2%       | -59.6%               | 29.7%         | 729,664                    | 831,453                    | -12.2% | Apparel Stores       | Miscellaneous Retail | Electronic Equipment | Auto Sales - New     |
| BEAUMONT                | -3.6%          | -13.4%        | -3.0%          | 4.9%         | -35.6%               | -3.3%         | 5,113,527                  | 5,352,883                  | -4.5%  | Restaurants          | Heavy Industry       | Miscellaneous Retail | Food Processing Eqp  |
| BLYTHE                  | -13.0%         | -3.0%         | -13.5%         | -3.0%        | -14.9%               | -15.9%        | 386,882                    | 426,564                    | -9.3%  | Leasing              | Office Equipment     | Service Stations     | Auto Parts/Repair    |
| CALIMESA                | 7.4%           | -1.8%         | -6.6%          | -11.1%       | 62.6%                | 10.1%         | 340,305                    | 333,279                    | 2.1%   | Florist/Nursery      | Light Industry       | Miscellaneous Retail | Service Stations     |
| CANYON LAKE             | 10.1%          | 10.6%         | 10.2%          | -100.0%      | 150.8%               | 16.8%         | 81,223                     | 70,424                     | 15.3%  | Heavy Industry       | Restaurants          | Business Services    | Service Stations     |
| CATHEDRAL CITY          | -1.7%          | -0.5%         | -4.2%          | -21.1%       | -5.1%                | 35.5%         | 2,757,074                  | 2,863,216                  | -3.7%  | Light Industry       | Misc. Vehicle Sales  | Auto Sales - New     | Service Stations     |
| COACHELLA               | -7.4%          | 7.1%          | -15.8%         | -11.0%       | 3.3%                 | 37.4%         | 1,113,049                  | 1,182,930                  | -5.9%  | Restaurants          | Apparel Stores       | Service Stations     | Drug Stores          |
| CORONA                  | 7.4%           | 3.1%          | -7.8%          | 14.6%        | 7.6%                 | -8.8%         | 11,936,601                 | 11,330,994                 | 5.3%   | Bldg.Matls-Whsle     | Miscellaneous Retail | Auto Sales - Used    | Auto Sales - New     |
| COUNTY OF RIVERSIDE     | -17.5%         | 0.6%          | 8.0%           | 3.0%         | -48.7%               | 12.2%         | 9,207,015                  | 10,725,442                 | -14.2% | Auto Sales - New     | Apparel Stores       | Leasing              | Department Stores    |
| DESERT HOT SPRINGS      | -10.7%         | 2.7%          | -7.7%          | 2.8%         | 73.0%                | 0.4%          | 507,440                    | 521,653                    | -2.7%  | Restaurants          | Light Industry       | Service Stations     | Miscellaneous Retail |
| EASTVALE                | 14.4%          | 3.3%          | 67.6%          | -3.7%        | -3.0%                | 11.6%         | 9,837,920                  | 8,729,094                  | 12.7%  | Miscellaneous Retail | Auto Sales - New     | Food Processing Eqp  | Bldg.Matls-Whsle     |
| HEMET                   | 5.1%           | -0.7%         | -9.6%          | -1.3%        | -7.4%                | -4.5%         | 3,257,071                  | 3,388,312                  | -3.9%  | Apparel Stores       | Florist/Nursery      | Auto Sales - New     | Service Stations     |
| INDIAN WELLS            | 12.0%          | 14.9%         | 0.0%           | -7.5%        | 80.8%                | -81.7%        | 703,135                    | 617,715                    | 13.8%  | Restaurants          | Miscellaneous Retail | Miscellaneous Other  | Light Industry       |
| INDIO                   | 7.9%           | 4.5%          | -7.4%          | -1.2%        | -3.1%                | -36.9%        | 3,801,390                  | 3,824,417                  | -0.6%  | Miscellaneous Retail | Restaurants          | Auto Sales - New     | Service Stations     |
| JURUPA VALLEY           | -7.5%          | 2.7%          | 11.7%          | -2.5%        | 2.3%                 | -35.7%        | 4,260,257                  | 4,221,300                  | 0.9%   | Office Equipment     | Recreation Products  | Light Industry       | Department Stores    |
| LA QUINTA               | 0.6%           | -3.3%         | -2.5%          | -2.5%        | -15.7%               | 79.8%         | 2,980,538                  | 3,031,404                  | -1.7%  | Department Stores    | Apparel Stores       | Restaurants          | Business Services    |
| LAKE ELSINORE           | -3.0%          | 1.3%          | 3.0%           | 8.1%         | -11.0%               | 20.1%         | 2,951,073                  | 2,962,405                  | -0.4%  | Bldg.Matls-Whsle     | Service Stations     | Electronic Equipment | Drug Stores          |
| MENIFEE                 | 10.6%          | 7.5%          | 0.5%           | -1.1%        | 24.7%                | 41.9%         | 2,535,529                  | 2,360,399                  | 7.4%   | Department Stores    | Leasing              | Office Equipment     | Bldg.Matls-Retail    |
| MORENO VALLEY           | -1.0%          | 2.1%          | -7.2%          | 19.7%        | 10.5%                | -19.8%        | 7,202,150                  | 7,160,625                  | 0.6%   | Bldg.Matls-Whsle     | Heavy Industry       | Auto Sales - New     | Furniture/Appliance  |
| MURRIETA                | -2.2%          | -0.2%         | -7.1%          | 5.9%         | 1.9%                 | 17.6%         | 5,164,638                  | 5,271,414                  | -2.0%  | Bldg.Matls-Whsle     | Florist/Nursery      | Furniture/Appliance  | Misc. Vehicle Sales  |
| NORCO                   | -0.9%          | -2.4%         | -0.2%          | 28.1%        | -3.5%                | -2.6%         | 2,152,152                  | 2,133,584                  | 0.9%   | Bldg.Matls-Whsle     | Florist/Nursery      | Miscellaneous Retail | Auto Sales - New     |
| PALM DESERT             | 1.6%           | -0.3%         | -5.1%          | -0.1%        | -3.6%                | 12.6%         | 6,128,192                  | 6,116,802                  | 0.2%   | Apparel Stores       | Department Stores    | Miscellaneous Retail | Recreation Products  |
| PALM SPRINGS            | -3.8%          | 3.7%          | -4.1%          | -5.3%        | -9.7%                | 34.6%         | 4,771,077                  | 4,883,128                  | -2.3%  | Restaurants          | Heavy Industry       | Auto Sales - New     | Leasing              |
| PERRIS                  | 15.5%          | 2.7%          | -2.9%          | 9.6%         | -10.8%               | 29.0%         | 5,472,184                  | 5,144,558                  | 6.4%   | Miscellaneous Retail | Bldg.Matls-Whsle     | Apparel Stores       | Heavy Industry       |
| RANCHO MIRAGE           | -11.0%         | -4.4%         | -7.9%          | -3.6%        | 0.0%                 | -15.9%        | 1,710,220                  | 1,824,166                  | -6.2%  | Light Industry       | Leasing              | Auto Sales - New     | Furniture/Appliance  |
| RIVERSIDE               | 2.1%           | 3.5%          | -1.5%          | -13.9%       | -0.5%                | -4.9%         | 17,592,319                 | 17,828,752                 | -1.3%  | Restaurants          | Heavy Industry       | Bldg.Matls-Whsle     | Misc. Vehicle Sales  |
| SAN JACINTO             | 37.4%          | -9.2%         | 2.4%           | -37.1%       | -20.5%               | 7.1%          | 969,369                    | 909,518                    | 6.6%   | Department Stores    | Service Stations     | Food Markets         | Bldg.Matls-Whsle     |
| TEMECULA                | 0.0%           | 1.9%          | -3.4%          | 2.1%         | 3.8%                 | -20.5%        | 9,569,237                  | 9,588,611                  | -0.2%  | Light Industry       | Miscellaneous Retail | Heavy Industry       | Auto Sales - New     |
| WILDOMAR                | -5.8%          | 19.6%         | -3.3%          | 11.0%        | 2.8%                 | 69.3%         | 639,909                    | 602,891                    | 6.1%   | Restaurants          | Food Markets         | Drug Stores          | Service Stations     |



# **AGENDA ITEM 6D**





| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |   |
|---|---|
| <b>DATE:</b>                                      | September 11, 2024  |
| <b>TO:</b>  | Riverside County Transportation Commission  |
| <b>FROM:</b>                                      | Michele Cisneros, Deputy Director of Finance<br>Sergio Vidal, Chief Financial Officer |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director  |
| <b>SUBJECT:</b>                                   | Quarterly Financial Statements  |

**STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Receive and file the Quarterly Financial Statements for the twelve months ended June 30, 2024.

**BACKGROUND INFORMATION:**

During the fiscal year, staff monitored the revenues and expenditures/expenses for the Commission. The attached preliminary unaudited financial statements present the revenues and expenditures/expenses for the Fiscal Year 2023/24. Many accrual adjustments for revenues and expenditures/expenses have been made for the year ended June 30, 2024, and are reflected in these financial statements; however, staff will continue to make year-end accrual adjustments based on materiality through the completion of the audit in October 2024.

The operating statement shows the Measure A, Local Transportation Fund (LTF), State Transit Assistance (STA), and State of Good Repair (SGR) sales tax revenues through the fourth quarter at 90 percent of the budget. The Governmental Accounting Standards Board (GASB) Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions*. GASB Statement No. 33 requires sales tax revenues to be accrued for the period in which they collected at the point of destination or sale, as applicable. The California Department of Tax and Fee Administration collects the sales tax funds and remits these funds to the Commission after the reporting period for the businesses. These creates a two-month lag in the receipt of revenues by the Commission. Accordingly, these financial statements reflect the Measure A and LTF revenues related to collections through May 2024 and received by the Commission in July 2024.

Thru May 2024 reporting period, receipts for Measure A are down approximately 3 percent when compared to the same period last fiscal year. LTF sales tax receipts are also down approximately 1 percent during the same period when compared to the last fiscal year. State Transit Assistance revenues, including State of Good Repair for the fourth quarter of Fiscal Year 2023/24, are

expected to be received in September 2024. Staff will continue to monitor the trends in the sales taxes and report to the Commission any necessary adjustments in revenue projections.

Federal, state, and local reimbursements are generally on a reimbursement basis as project costs are incurred. Significant federal and state reimbursements are related to Interstate (I) 15 Express Lanes project, including the I-15 Express Lanes Southern Extension; 71/91 Connector project; Mid County Parkway projects; State Route 60 Truck Lanes project; Smart Freeways project; Moreno Valley/March Field Rail Upgrade; rail state of good repair projects; South Perris Station and Layover Facility; and other station improvements. Below is an analysis of federal and state reimbursements reflected in this quarterly report:

|   | Federal Reimbursements |                      | State Reimbursements |                      |
|---|------------------------|----------------------|----------------------|----------------------|
|   | Budget                 | Actual               | Budget               | Actual               |
| <b>Highways</b>                               |                        |                      |                      |                      |
| I-15 Express Lanes                            | \$ -                   | \$ 18,904,270        | \$ -                 | \$ -                 |
| I-15 Southern Extension                       | 14,572,200             | 3,305,275            | -                    | -                    |
| 71/91 Connector                               | 9,850,000              | 6,849,491            | 55,000,000           | 54,762,553           |
| Mid County Parkway                            | 8,705,900              | 7,315,038            | 2,775,300            | 1,998,570            |
| SR-60 Truck Lanes                             | 303,200                | 585,560              | 196,800              | 454,507              |
| Smart Freeways                                | 13,900,000             | 319,505              | -                    | -                    |
| <b>Total</b>                                  | <b>47,331,300</b>      | <b>37,279,139</b>    | <b>57,972,100</b>    | <b>57,215,630</b>    |
| <b>Rail</b>                                   |                        |                      |                      |                      |
| Moreno Valley - March Field Station Upgrade   | 17,450,000             | 15,899,006           | -                    | -                    |
| Rail State of Good Repair                     | 15,000,000             | 3,118,355            | -                    | -                    |
| Riverside Station Track and Platform          | 250,000                | 8,274                | -                    | -                    |
| South Perris Station and Layover Facility     | -                      | -                    | 1,125,000            | 1,087,243            |
| Other Station Improvements and Rehabilitation | 7,000,000              | 6,994,383            | 3,500,000            | 1,635,864            |
| <b>Total</b>                                  | <b>39,700,000</b>      | <b>26,020,018</b>    | <b>4,625,000</b>     | <b>2,723,107</b>     |
| <b>Other</b>                                  | <b>5,641,000</b>       | <b>2,711,613</b>     | <b>20,544,000</b>    | <b>6,909,861</b>     |
| <b>Total</b>                                  | <b>\$ 92,672,300</b>   | <b>\$ 66,010,770</b> | <b>\$ 83,141,100</b> | <b>\$ 66,848,598</b> |

Staff will continue to prepare year-end reimbursement accrual adjustments in connection with the year-end closing and audit process.

During the FY 2023/24 budget process, the Commission estimated the Transportation Uniform Mitigation Fee (TUMF) revenues at \$30 million passed through from Western Riverside Council of Governments. Preliminarily, through the fourth quarter of FY 2023/24, the Commission received TUMF revenues through April 2024 of \$35.9 million. The Commission expects to receive June TUMF revenues in the first quarter of FY 2024/25. The \$1 million TUMF zone reimbursement budget reflects the Interstate 10 Highland Springs Avenue Interchange project and eligible expenditures of \$1.4 million were invoiced.

The RCTC 91 Express Lanes and 15 Express Lanes toll revenues, penalties, and fees are at \$92.7 million and \$43.8 million, respectively, totaling \$136.5 million for the fourth quarter of FY 2023/24. The operating statement shows toll revenues, penalties, and fees at 139 percent of the budget. This reflects periodic toll rate changes made based on traffic volumes according to

the approved toll policy on the RCTC 91 Express Lanes. Staff will continue to monitor the toll transactions and/or trips and non-toll revenues.

The operating statement shows other revenues at 181 percent of the \$723,500 budget and reflects property management lease revenues and Mid County Parkway property acquisition refund.

During the FY 2023/24 budget process, the Commission estimated investment income at \$13,242,700 due to current market conditions. The operating statement shows investment income, which includes net unrealized investment gains and losses at \$66 million.

The expenditures/expenses and other financing sources/uses categories are in line overall with the expectations with the following exceptions:

- Salaries and benefits are under budget primarily due to unfilled positions for an Accounting Technician, IT Administrator, and Senior Capital Projects Manager;
- Professional services are under budget primarily due to unused budget authority for general legal services; financial advisory services; audit services; rail operations and development activities; and highway, commuter assistance, specialized transportation, and regional conservation other professional services;
- Support costs are under budget due to unused budget authority for rail station maintenance and repairs; express lanes operations and maintenance; call box maintenance and repairs; advertising; and software and computer maintenance and repairs;
- Program operations are under budget due to unused budget authority for rail station security; toll operations; motorist and commuter assistance program operations; and highway and rail program management;
- The status of significant Commission capital projects (engineering, construction, design-build, and right of way/land) with budget amounts exceeding \$5 million is discussed within Attachment 1;
- Operating and capital disbursements are made as claims are submitted to the Commission by transit operators;
- Special studies unused budget authority is related to feasibility studies;
- Local street and roads expenditures are related to Measure A sales tax revenues. These financial statements reflect the turnback payments through May 2024;
- Regional arterial expenditures represent expenditures for the highway and regional arterial program administered by the Coachella Valley Association of Governments (CVAG). CVAG requests reimbursements from the Commission based on available funds and sufficient budget authority;
- Debt service principal payments are made annually on June 1, while debt service interest payments are made semiannually on December 1 and June 1. In accordance with the applicable accounting standards related to the Enterprise funds, both the RCTC 91 and 15 Express Lanes Enterprise funds record accrued and compounded interest on its related

debt such as the RCTC 91 Express Lanes 2021 Toll Refunding Bonds and 2013 Toll Revenue Bonds, Series B capital appreciation bonds for the 91 Project as well as the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan for the 15 Express Lanes project. Therefore, \$7.9 million of the \$66.7 million interest cost through the fourth quarter will not be paid in the current year for the RCTC 91 and 15 Express Lanes Enterprise funds and therefore, not included in the FY 2023/24 budget;

- Capital outlay expenditures are under budget due to unused budget authority for office improvements, property improvements for station rehabilitation, toll operations equipment, and Commission network, hardware, and software improvements;
- Depreciation is recorded as part of the accrual adjustments in the RCTC 91 and 15 Express Lanes Enterprise funds accounting records; however, depreciation is considered a non-cash transaction and not included in the FY 2023/24 budget; and
- Transfers in and out include the fourth quarter administrative cost allocation process, Measure A Sales Tax Bonds debt funding, LTF disbursements for planning and programming activities, and 15/91 Express Lanes Connector project with toll surplus funding.

**FISCAL IMPACT:**

This is an information item. There is no fiscal impact.

Attachments:

- 1) Quarterly Project Status – June 2024
- 2) Quarterly Financial Statements – June 2024

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
QUARTERLY PROJECT STATUS  
4<sup>th</sup> QUARTER  
FOR TWELVE MONTHS ENDED 06/30/2024**

| Project Description  | FY 2023/24<br>through 4 <sup>th</sup><br>Quarter<br>Budget | Expenditures<br>through 4 <sup>th</sup><br>Quarter<br>Actuals | Project Status  |
|--|--|---|---|
| <p><b>91 Express Lanes (P009103 &amp; P009104)</b><br/>These projects provide repair and rehabilitation of SR-91 general purpose and express lanes, as well as the implementation of a new back-office system. <b>The FY2023/24 budget amount is \$8,516,200.</b></p>  | \$9,826,200  | \$4,729,133   | The under run of the FY 2023/24 budget at the fourth quarter is due to lower than anticipated expended costs for Phase 2 corridor improvements and associated project construction (\$1.4 million), project construction manager (\$0.2 million) and unused contingency for back-office system implementation (\$3.4 million).  |
| <p><b>I-15 Express Lanes Southern Extension (P003044)</b><br/>The project will add express lanes between SR-74 and Cajalco Road. The estimated project cost is \$544 million with the Project Approval and Environmental Document (PA/ED) phase of work funded by federal Congestion Mitigation and Air Quality (CMAQ) funds and Measure A. <b>The FY 2023/24 budget amount is \$16,803,200.</b></p>   | \$17,003,200   | \$5,419,432   | The under run of the FY 2023/24 budget at the fourth quarter is due to unused contingency from the preliminary engineering and environmental document contractor (\$5.4 million), legal and other professional services (\$1.3 million) and lower than anticipated costs from the project construction manager (\$4.7 million). |
| <p><b>15/91 Express Lanes Connector (P003039)</b><br/>The 15/91 Express Lane Connector (ELC) project constructs an express lanes median direct connector from southbound I-15 to westbound SR-91 and from eastbound SR-91 to northbound I-15 in the city of Corona. The project also adds tolled express lanes in each direction of I-15 from the 15/91 ELC to Hidden Valley Parkway; adds a tolled express lane in each direction of SR-91 from east of Lincoln Avenue to the 15/91 ELC; extends the tolled express lane along eastbound SR-91 from I-15 to west of Promenade Avenue; and extends an eastbound auxiliary lane along SR-91 from west of I-15 to west of Promenade Avenue. The project also includes the addition of a toll collection system infrastructure along I-15 and SR-91. The estimated project cost is \$270 million, and the project is partially funded by state funds allocated under Senate Bill (SB) 132 legislation. The connector is expected to open to traffic in 2023. <b>The FY 2023/24 budget amount is \$36,914,000.</b></p> | \$36,756,000   | \$27,030,874  | The under run of the FY 2023/24 budget at the fourth quarter is due to late invoicing and unused contingency from the design builder (\$8.3 million) and unused contingency from the project construction management contract (\$0.4 million).  |

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
 QUARTERLY PROJECT STATUS  
 4<sup>th</sup> QUARTER  
 FOR TWELVE MONTHS ENDED 06/30/2024**

| Project Description  | FY 2023/24<br>through 4 <sup>th</sup><br>Quarter<br>Budget | Expenditures<br>through 4 <sup>th</sup><br>Quarter<br>Actuals | Project Status  |
|--|--|---|---|
| <p><b>Mid County Parkway (MCP) (P002302, P002317, P002320, P002324, &amp; P002328)</b><br/>           The environmental document for a new corridor from I-215 to SR-79 was approved in April 2015. The first design package is under construction. Construction of this new facility will be completed over many years as funding becomes available; the total project cost is estimated at \$1.3 to \$2.1 billion. <b>The FY 2023/24 budget amount is \$ \$29,874,700.</b></p> | \$30,435,700   | \$19,781,077  | <p>The under run of the FY 2023/24 budget at the fourth quarter is primarily due to the following for each project:</p> <ul style="list-style-type: none"> <li>• MCP: The minimal under run is due to right of way (ROW) acquisition and ROW support (\$0.8 million).</li> <li>• MCP I-215/Placentia Interchange: The over run for this project was due construction (\$0.47 million), and final design (0.1 million).</li> <li>• MCP Mitigation: The first year of plant establishment was completed at the beginning of the third quarter in FY 2020/21 and the under run in the fourth quarter of FY 2023/24 was due to mitigation property monitoring (\$2.3 million).</li> <li>• MCP2 and MCP3: The Commission approved the shift from MCP2 to MCP3 at the May 2022 Commission meeting. The under run was due to unused contingency for ROW acquisition/support services on MCP2 (\$2.4 million). The under run for MCP3 was due to lower-than-expected actuals for final design (\$1.4 million) and pending offers in negotiation for ROW acquisitions/support services (\$3.1 million).</li> </ul> |
| <p><b>71/91 Connector Project (P003021)</b><br/>           The project includes ROW acquisition, utility relocation, and environmental revalidation work for improvements to the 71/91 connector. The estimated project cost is \$118 million. <b>The FY 2023/24 budget amount is \$66,221,900.</b></p>  | \$66,221,900   | \$70,039,817  | <p>The overrun of the FY 2023/24 budget at the fourth quarter is due to additional change orders issued for construction (\$4.7 million), final design (\$0.2 million) and construction support services (\$0.4 million). The overall project budget is in line with estimates.</p>   |
| <p><b>Smart Freeways (P003051)</b><br/>           The project includes environmental clearance, design, and commence construction of a pilot project to install a smart freeway system on northbound I-15 in the city of Temecula. <b>The FY 2023/24 budget amount is \$16,180,000.</b></p>  | \$13,734,000   | \$1,566,168   | <p>The under run of the FY 2023/24 budget at the fourth quarter is due to engineering &amp; environmental support services (\$1.6 million), lower than expected costs for Information Technology System Operator (\$1.5 million), and unused construction budget (\$9.7 million) that is not scheduled to commence until the second quarter of FY 2024/25.</p>  |

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
 QUARTERLY PROJECT STATUS  
 4<sup>th</sup> QUARTER  
 FOR TWELVE MONTHS ENDED 06/30/2024**

| Project Description   | FY 2023/24<br>through 4 <sup>th</sup><br>Quarter<br>Budget | Expenditures<br>through 4 <sup>th</sup><br>Quarter<br>Actuals | Project Status   |
|---|--|---|--|
| <p><b>Santa Ana River Trail Extension (SART) (P007201 &amp; P007202)</b><br/>           The Commission provides support to the Riverside County Regional Park and Open Space District (District) for the projects under a cooperative planning and development agreement. The District is the lead agency for environmental compliance for NEPA and CEQA, and the Commission is responsible for project oversight and approval, final design, and construction. The projects are a joint effort with several public and private agencies including the county of Orange and the United States Army Corps of Engineers. The district is responsible for 100% of costs. <b>The FY 2023/24 budget amount is \$6,756,700.</b></p> | \$6,492,000  | \$916,648   | The under run of the FY 2023/24 budget at the fourth quarter is due to final design (\$0.4 million) and preliminary engineering (\$0.2 million) for SART 1. Additionally, the under run in SART 2 is due to a slow ramp up of right of way acquisition and support services (\$4.3 million) and lower than expected charges for final design (\$0.54 million). |
| <p><b>Moreno Valley-March Field station upgrade (P004026)</b><br/>           The project will remove and replace approximately 2.5 miles of existing rail and wood ties with new rail and concrete ties, remove / replace / regrade track ballast, improve track drainage, install new track signals and Positive Train Control system, connect to existing signals and communication systems, build a new second passenger loading platform, extend the existing passenger loading platform to current Metrolink station standards, and perform other improvements necessary to bring the tracks into compliance with Metrolink standards. <b>The FY 2023/24 budget amount is \$18,398,900.</b></p>                          | \$19,503,500   | \$20,228,747  | The slight overrun of the FY 2023/24 budget at the fourth quarter is due to construction taking longer than expected (\$0.9 million) that was offset by unused contingency of construction management (\$0.2 million).   |

This list discusses the significant capital projects (i.e., total budgeted costs in excess of \$5 million) and related status. Capital project expenditures are generally affected by lags in invoices submitted by contractors and consultants, as well as issues encountered during certain phases of the projects. The capital projects budgets tend to be based on aggressive project schedules.





**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
 QUARTERLY BUDGET TO ACTUAL  
 4TH QUARTER  
 FOR TWELVE MONTHS ENDED 6/30/2024**

|   | <b>FY 2023/24<br/>BUDGET</b> | <b>4TH QUARTER<br/>ACTUAL</b> | <b>REMAINING<br/>BALANCE</b> | <b>PERCENT<br/>UTILIZATION</b> |
|---|------------------------------|-------------------------------|------------------------------|--------------------------------|
| <b>Revenues</b>   |                              |                               |                              |                                |
| Sales tax   | \$ 473,394,500               | \$ 426,515,914                | \$ 46,878,586                | 90%                            |
| Federal reimbursements                                    | 92,672,300                   | 66,010,770                    | 26,661,530                   | 71%                            |
| State reimbursements                                      | 83,141,100                   | 66,848,598                    | 16,292,502                   | 80%                            |
| Local reimbursements                                      | 21,023,600                   | 26,466,136                    | (5,442,536)                  | 126%                           |
| Transportation Uniform Mitigation Fee                     | 31,000,000                   | 35,983,209                    | (4,983,209)                  | 116%                           |
| Tolls, penalties, and fees                                | 97,989,000                   | 136,446,180                   | (38,457,180)                 | 139%                           |
| Other revenues  | 723,500                      | 1,307,740                     | (584,240)                    | 181%                           |
| Investment income   | 13,242,700                   | 66,074,846                    | (52,832,146)                 | 499%                           |
| <b>Total revenues</b>                                     | <b>813,186,700</b>           | <b>825,653,393</b>            | <b>(12,466,693)</b>          | <b>102%</b>                    |
| <b>Expenditures/Expenses</b>                              |                              |                               |                              |                                |
| Salaries and benefits                                     | 17,563,900                   | 15,980,671                    | 1,583,229                    | 91%                            |
| <b>Professional and support</b>                           |                              |                               |                              |                                |
| Professional services                                     | 24,394,100                   | 12,672,583                    | 11,721,517                   | 52%                            |
| Support costs   | 22,127,800                   | 15,167,247                    | 6,960,553                    | 69%                            |
| <b>Total Professional and support costs</b>               | <b>46,521,900</b>            | <b>27,839,830</b>             | <b>18,682,070</b>            | <b>60%</b>                     |
| <b>Projects and operations</b>                            |                              |                               |                              |                                |
| Program operations  | 50,102,200                   | 33,190,489                    | 16,911,711                   | 66%                            |
| Engineering   | 34,981,600                   | 16,187,632                    | 18,793,968                   | 46%                            |
| Construction  | 243,090,800                  | 109,196,862                   | 133,893,938                  | 45%                            |
| Design Build  | 39,391,200                   | 23,066,345                    | 16,324,855                   | 59%                            |
| Right of way/land   | 46,095,200                   | 23,096,451                    | 22,998,749                   | 50%                            |
| Operating and capital disbursements                       | 252,155,900                  | 169,792,311                   | 82,363,589                   | 67%                            |
| Special studies   | 14,901,000                   | 4,205,846                     | 10,695,154                   | 28%                            |
| Local streets and roads                                   | 84,545,100                   | 77,211,931                    | 7,333,169                    | 91%                            |
| Regional arterials  | 61,603,700                   | 61,603,685                    | 15                           | 100%                           |
| <b>Total projects and operations</b>                      | <b>826,866,700</b>           | <b>517,551,552</b>            | <b>309,315,148</b>           | <b>63%</b>                     |
| <b>Debt service</b>                                       |                              |                               |                              |                                |
| Principal   | 32,635,000                   | 32,635,000                    | -                            | 100%                           |
| Interest  | 58,781,200                   | 66,701,429                    | (7,920,229)                  | 113%                           |
| <b>Total debt service</b>                                 | <b>91,416,200</b>            | <b>99,336,429</b>             | <b>(7,920,229)</b>           | <b>109%</b>                    |
| Capital outlay  | 7,500,700                    | 5,843,531                     | 1,657,169                    | 78%                            |
| Depreciation  | -                            | 22,088,199                    | (22,088,199)                 | N/A                            |
| <b>Total Expenditures/Expenses</b>                        | <b>989,869,400</b>           | <b>688,640,212</b>            | <b>301,229,188</b>           | <b>70%</b>                     |
| <b>Excess revenues over (under) expenditures/expenses</b> | <b>(176,682,700)</b>         | <b>137,013,181</b>            | <b>(313,695,881)</b>         | <b>-78%</b>                    |
| <b>Other financing sources/(uses)</b>                     |                              |                               |                              |                                |
| Transfer in   | 213,568,200                  | 187,151,383                   | 26,416,817                   | 88%                            |
| Transfer out  | (213,568,200)                | (187,151,383)                 | (26,416,817)                 | 88%                            |
| <b>Total financing sources/(uses)</b>                     | <b>-</b>                     | <b>-</b>                      | <b>-</b>                     | <b>N/A</b>                     |
| <b>Net change in fund balances</b>                        | <b>(176,682,700)</b>         | <b>137,013,181</b>            | <b>313,695,881</b>           | <b>-78%</b>                    |
| Fund balance July 1, 2023                                 | 1,382,220,300                | 1,200,727,959                 | (181,492,341)                | 87%                            |
| <b>Fund balance June 30, 2024</b>                         | <b>\$ 1,205,537,600</b>      | <b>\$ 1,337,741,140</b>       | <b>\$ 132,203,540</b>        | <b>111%</b>                    |

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
 QUARTERLY BUDGET TO ACTUAL BY FUND  
 4TH QUARTER  
 FOR TWELVE MONTHS ENDED 6/30/2024**

|   | SPECIAL REVENUE FUNDS |                      |                       |                      |                      |                                |                             |                         |  |                          |                          |                          |                     |
|---|-----------------------|----------------------|-----------------------|----------------------|----------------------|--------------------------------|-----------------------------|-------------------------|--|--------------------------|--------------------------|--------------------------|---------------------|
|   | GENERAL FUND          | FSP/<br>SAFE         | MEASURE A SALES TAX   |                      |                      | TRANSPORTATION DEVELOPMENT ACT |                             |                         | TRANSPORTATION<br>UNIFORM MITIGATION FEE<br>(TUMF) | COACHELLA<br>VALLEY RAIL | OTHER AGENCY<br>PROJECTS | REGIONAL<br>CONSERVATION | SB132               |
|   |                       |                      | WESTERN COUNTY        | COACHELLA<br>VALLEY  | PALO VERDE<br>VALLEY | LOCAL TRANSPORTATION<br>FUND   | STATE TRANSIT<br>ASSISTANCE | STATE OF GOOD<br>REPAIR |  |                          |                          |                          |                     |
| <b>Revenues</b>                             |                       |                      |                       |                      |                      |                                |                             |                         |  |                          |                          |                          |                     |
| Sales tax                                   | \$ -                  | \$ -                 | \$ 205,610,152        | \$ 49,390,263        | \$ 982,646           | \$ 142,871,972                 | \$ 24,168,804               | \$ 3,492,077            | \$ -   | \$ -                     | \$ -                     | \$ -                     | \$ -                |
| Federal reimbursements                      | 7,266,705             | -                    | 55,920,860            | -                    | -                    | -                              | -                           | -                       | -  | -                        | -                        | -                        | -                   |
| State reimbursements                        | 2,157,542             | 5,508,516            | 59,311,884            | -                    | -                    | -                              | -                           | 28,447                  | (157,791)  | -                        | -                        | -                        | -                   |
| Local reimbursements                        | 45                    | 1,602                | 2,401,875             | 225,096              | -                    | 13,765,354                     | -                           | -                       | 230,515  | -                        | 916,661                  | 8,863,324                | 12,560              |
| Transportation Uniform Mitigation Fee       | -                     | -                    | -                     | -                    | -                    | -                              | -                           | -                       | 35,983,209   | -                        | -                        | -                        | -                   |
| Tolls, penalties, and fees                  | -                     | -                    | -                     | -                    | -                    | -                              | -                           | -                       | -  | -                        | -                        | -                        | -                   |
| Other revenues                              | 311                   | -                    | 882,296               | -                    | -                    | -                              | -                           | -                       | 19,300   | -                        | -                        | -                        | 304,250             |
| Investment income                           | 1,488,989             | 547,303              | 16,393,563            | 4,095,272            | -                    | 12,991,170                     | 6,604,956                   | 573,458                 | 6,864,560  | 93,688                   | 33,577                   | 34,489                   | 1,398,686           |
| <b>Total revenues</b>                       | <b>10,913,592</b>     | <b>6,057,421</b>     | <b>340,520,630</b>    | <b>53,710,631</b>    | <b>982,646</b>       | <b>169,628,496</b>             | <b>30,773,760</b>           | <b>4,093,982</b>        | <b>42,939,793</b>                                  | <b>93,688</b>            | <b>950,238</b>           | <b>8,897,813</b>         | <b>1,715,496</b>    |
| <b>Expenditures/Expenses</b>                |                       |                      |                       |                      |                      |                                |                             |                         |  |                          |                          |                          |                     |
| Salaries and benefits                       | 7,336,400             | 105,728              | 2,936,569             | 2,116                | -                    | -                              | -                           | -                       | 159,772  | 59,453                   | 79,773                   | 3,152,247                | 390,700             |
| Professional and support                    |                       |                      |                       |                      |                      |                                |                             |                         |  |                          |                          |                          |                     |
| Professional services                       | 4,045,752             | 164,943              | 3,265,768             | 8,197                | -                    | -                              | 16,394                      | 116,709                 | 213,954  | 28,742                   | 9,661                    | 3,312,537                | 148,879             |
| Support costs                               | 3,341,243             | 107,084              | 2,799,712             | -                    | -                    | -                              | -                           | -                       | 349  | 913                      | (13)                     | 393,313                  | 479,701             |
| <b>Total Professional and support costs</b> | <b>7,386,995</b>      | <b>272,027</b>       | <b>6,065,480</b>      | <b>8,197</b>         | <b>-</b>             | <b>-</b>                       | <b>16,394</b>               | <b>116,709</b>          | <b>214,303</b>                                     | <b>29,655</b>            | <b>9,648</b>             | <b>3,705,850</b>         | <b>628,580</b>      |
| <b>Projects and operations</b>              |                       |                      |                       |                      |                      |                                |                             |                         |  |                          |                          |                          |                     |
| Program operations                          | 48,924                | 4,329,109            | 13,014,218            | -                    | -                    | -                              | -                           | -                       | 221,965  | 22,724                   | 180,546                  | 53,841                   | 302,819             |
| Engineering                                 | -                     | -                    | 11,921,667            | -                    | -                    | -                              | -                           | -                       | 2,535,143  | -                        | 504,261                  | -                        | 1,226,561           |
| Construction                                | -                     | -                    | 103,826,130           | -                    | -                    | -                              | -                           | -                       | 1,212,916  | -                        | -                        | -                        | 2,590,691           |
| Design Build                                | -                     | -                    | 803,525               | -                    | -                    | -                              | -                           | -                       | -  | -                        | -                        | -                        | 21,676,595          |
| Right of way/land                           | -                     | -                    | 17,199,159            | -                    | -                    | -                              | -                           | -                       | 4,723,823  | -                        | 142,420                  | 786,185                  | 244,864             |
| Operating and capital disbursements         | 32,964,748            | -                    | 4,875,916             | 8,275,000            | -                    | 104,604,918                    | 17,047,431                  | 2,024,298               | -  | -                        | -                        | -                        | -                   |
| Special studies                             | 4,205,846             | -                    | -                     | -                    | -                    | -                              | -                           | -                       | -  | -                        | -                        | -                        | -                   |
| Local streets and roads                     | -                     | -                    | 59,166,693            | 17,095,592           | 949,646              | -                              | -                           | -                       | -  | -                        | -                        | -                        | -                   |
| Regional arterials                          | -                     | -                    | -                     | 61,603,685           | -                    | -                              | -                           | -                       | -  | -                        | -                        | -                        | -                   |
| <b>Total projects and operations</b>        | <b>37,219,518</b>     | <b>4,329,109</b>     | <b>210,807,308</b>    | <b>86,974,277</b>    | <b>949,646</b>       | <b>104,604,918</b>             | <b>17,047,431</b>           | <b>2,024,298</b>        | <b>8,693,847</b>                                   | <b>22,724</b>            | <b>827,227</b>           | <b>840,026</b>           | <b>26,041,530</b>   |
| <b>Debt service</b>                         |                       |                      |                       |                      |                      |                                |                             |                         |  |                          |                          |                          |                     |
| Principal                                   | -                     | -                    | -                     | -                    | -                    | -                              | -                           | -                       | -  | -                        | -                        | -                        | -                   |
| Interest                                    | -                     | -                    | -                     | -                    | -                    | -                              | -                           | -                       | -  | -                        | -                        | -                        | -                   |
| <b>Total debt service</b>                   | <b>-</b>              | <b>-</b>             | <b>-</b>              | <b>-</b>             | <b>-</b>             | <b>-</b>                       | <b>-</b>                    | <b>-</b>                | <b>-</b>   | <b>-</b>                 | <b>-</b>                 | <b>-</b>                 | <b>-</b>            |
| <b>Capital outlay</b>                       | <b>303,626</b>        | <b>369</b>           | <b>5,486,882</b>      | <b>-</b>             | <b>-</b>             | <b>-</b>                       | <b>-</b>                    | <b>-</b>                | <b>-</b>   | <b>-</b>                 | <b>-</b>                 | <b>-</b>                 | <b>-</b>            |
| Depreciation                                | -                     | -                    | -                     | -                    | -                    | -                              | -                           | -                       | -  | -                        | -                        | -                        | -                   |
| <b>Total Expenditures/Expenses</b>          | <b>52,246,539</b>     | <b>4,707,233</b>     | <b>225,296,239</b>    | <b>86,984,590</b>    | <b>949,646</b>       | <b>104,604,918</b>             | <b>17,063,825</b>           | <b>2,141,007</b>        | <b>9,067,922</b>                                   | <b>111,832</b>           | <b>916,648</b>           | <b>7,698,123</b>         | <b>27,060,810</b>   |
| <b>Excess revenues over (under)</b>         | <b>(41,332,947)</b>   | <b>1,350,188</b>     | <b>115,224,391</b>    | <b>(33,273,959)</b>  | <b>33,000</b>        | <b>65,023,578</b>              | <b>13,709,935</b>           | <b>1,952,975</b>        | <b>33,871,871</b>                                  | <b>(18,144)</b>          | <b>33,590</b>            | <b>1,199,690</b>         | <b>(25,345,314)</b> |
| <b>Other financing sources/(uses)</b>       |                       |                      |                       |                      |                      |                                |                             |                         |  |                          |                          |                          |                     |
| Transfer in                                 | 39,489,831            | -                    | 49,490,797            | 124,220              | -                    | -                              | -                           | -                       | 38,208   | 124,174                  | -                        | -                        | 27,016,476          |
| Transfer out                                | (965,801)             | (235,100)            | (90,085,042)          | (489,300)            | (39,500)             | (29,873,418)                   | (4,116,901)                 | (1,182,130)             | (7,495,696)  | (16,700)                 | -                        | (1,165,200)              | -                   |
| <b>Total financing sources/(uses)</b>       | <b>38,524,030</b>     | <b>(235,100)</b>     | <b>(40,594,245)</b>   | <b>(365,080)</b>     | <b>(39,500)</b>      | <b>(29,873,418)</b>            | <b>(4,116,901)</b>          | <b>(1,182,130)</b>      | <b>(7,457,488)</b>                                 | <b>107,474</b>           | <b>-</b>                 | <b>(1,165,200)</b>       | <b>27,016,476</b>   |
| <b>Net change in fund balances</b>          | <b>(2,808,917)</b>    | <b>1,115,088</b>     | <b>74,630,146</b>     | <b>(33,639,039)</b>  | <b>(6,500)</b>       | <b>35,150,160</b>              | <b>9,593,034</b>            | <b>770,845</b>          | <b>26,414,383</b>                                  | <b>89,330</b>            | <b>33,590</b>            | <b>34,490</b>            | <b>1,671,162</b>    |
| Fund balance July 1, 2023                   | 37,100,151            | 13,328,700           | 438,154,128           | 96,210,303           | -                    | 336,576,925                    | 142,158,549                 | 12,661,636              | 148,270,737  | 2,257,390                | 28,174                   | (2,362)                  | 1,003,665           |
| <b>Fund balance June 30, 2024</b>           | <b>\$ 34,291,234</b>  | <b>\$ 14,443,788</b> | <b>\$ 512,784,274</b> | <b>\$ 62,571,264</b> | <b>\$ (6,500)</b>    | <b>\$ 371,727,085</b>          | <b>\$ 151,751,583</b>       | <b>\$ 13,432,481</b>    | <b>\$ 174,685,120</b>                              | <b>\$ 2,346,720</b>      | <b>\$ 61,764</b>         | <b>\$ 32,128</b>         | <b>\$ 2,674,827</b> |

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
 QUARTERLY BUDGET TO ACTUAL BY FUND  
 4TH QUARTER  
 FOR TWELVE MONTHS ENDED 6/30/2024**

|   | ENTERPRISE FUND   |                     | CAPITAL PROJECTS FUNDS |                     |                   |          | COMBINED TOTAL     |
|---|-------------------|---------------------|------------------------|---------------------|-------------------|----------|--------------------|
|   | 15 EXPRESS LANES  | 91 EXPRESS LANES    | COMMERCIAL PAPER       | SALES TAX BONDS     | DEBT SERVICE      |          |                    |
| Revenues                                    |                   |                     |                        |                     |                   |          |                    |
| Sales tax                                   | \$ -              | \$ -                | \$ -                   | \$ -                | \$ -              | \$ -     | 426,515,914        |
| Federal reimbursements                      | -                 | -                   | -                      | -                   | 2,823,205         | -        | 66,010,770         |
| State reimbursements                        | -                 | -                   | -                      | -                   | -                 | -        | 66,848,598         |
| Local reimbursements                        | -                 | 49,104              | -                      | -                   | -                 | -        | 26,466,136         |
| Transportation Uniform Mitigation Fee       | -                 | -                   | -                      | -                   | -                 | -        | 35,983,209         |
| Tolls, penalties, and fees                  | 43,778,015        | 92,668,165          | -                      | -                   | -                 | -        | 136,446,180        |
| Other revenues                              | 101,583           | -                   | -                      | -                   | -                 | -        | 1,307,740          |
| Investment income                           | 4,699,210         | 7,348,246           | 890,802                | 560,697             | 1,456,180         | -        | 66,074,846         |
| <b>Total revenues</b>                       | <b>48,578,808</b> | <b>100,065,515</b>  | <b>890,802</b>         | <b>560,697</b>      | <b>4,279,385</b>  | <b>-</b> | <b>825,653,393</b> |
| Expenditures/Expenses                       |                   |                     |                        |                     |                   |          |                    |
| Salaries and benefits                       | 577,688           | 1,180,225           | -                      | -                   | -                 | -        | 15,980,671         |
| Professional and support                    |                   |                     |                        |                     |                   |          |                    |
| Professional services                       | 481,843           | 859,204             | -                      | -                   | -                 | -        | 12,672,583         |
| Support costs                               | 2,936,932         | 5,108,013           | -                      | -                   | -                 | -        | 15,167,247         |
| <b>Total Professional and support costs</b> | <b>3,418,775</b>  | <b>5,967,217</b>    | <b>-</b>               | <b>-</b>            | <b>-</b>          | <b>-</b> | <b>27,839,830</b>  |
| Projects and operations                     |                   |                     |                        |                     |                   |          |                    |
| Program operations                          | 6,686,823         | 8,329,520           | -                      | -                   | -                 | -        | 33,190,489         |
| Engineering                                 | -                 | -                   | -                      | -                   | -                 | -        | 16,187,632         |
| Construction                                | 8,950             | 1,558,175           | -                      | -                   | -                 | -        | 109,196,862        |
| Design Build                                | -                 | 586,225             | -                      | -                   | -                 | -        | 23,066,345         |
| Right of way/land                           | -                 | -                   | -                      | -                   | -                 | -        | 23,096,451         |
| Operating and capital disbursements         | -                 | -                   | -                      | -                   | -                 | -        | 169,792,311        |
| Special studies                             | -                 | -                   | -                      | -                   | -                 | -        | 4,205,846          |
| Local streets and roads                     | -                 | -                   | -                      | -                   | -                 | -        | 77,211,931         |
| Regional arterials                          | -                 | -                   | -                      | -                   | -                 | -        | 61,603,685         |
| <b>Total projects and operations</b>        | <b>6,695,773</b>  | <b>10,473,920</b>   | <b>-</b>               | <b>-</b>            | <b>-</b>          | <b>-</b> | <b>517,551,552</b> |
| Debt service                                |                   |                     |                        |                     |                   |          |                    |
| Principal                                   | -                 | -                   | -                      | -                   | 32,635,000        | -        | 32,635,000         |
| Interest                                    | 5,210,429         | 24,910,962          | -                      | -                   | 36,580,038        | -        | 66,701,429         |
| <b>Total debt service</b>                   | <b>5,210,429</b>  | <b>24,910,962</b>   | <b>-</b>               | <b>-</b>            | <b>69,215,038</b> | <b>-</b> | <b>99,336,429</b>  |
| Capital outlay                              | 20,846            | 31,808              | -                      | -                   | -                 | -        | 5,843,531          |
| Depreciation                                | 12,517,271        | 9,570,928           | -                      | -                   | -                 | -        | 22,088,199         |
| <b>Total Expenditures/Expenses</b>          | <b>28,440,782</b> | <b>52,135,060</b>   | <b>-</b>               | <b>-</b>            | <b>69,215,038</b> | <b>-</b> | <b>688,640,212</b> |
| Excess revenues over (under)                | 20,138,026        | 47,930,455          | 890,802                | 560,697             | (64,935,653)      | -        | 137,013,181        |
| Other financing sources/(uses)              |                   |                     |                        |                     |                   |          |                    |
| Transfer in                                 | 204               | 180,634             | -                      | 632,802             | 70,054,037        | -        | 187,151,383        |
| Transfer out                                | (354,500)         | (28,561,475)        | (2,437,262)            | (16,553,132)        | (3,580,226)       | -        | (187,151,383)      |
| <b>Total financing sources/(uses)</b>       | <b>(354,296)</b>  | <b>(28,380,841)</b> | <b>(2,437,262)</b>     | <b>(15,920,330)</b> | <b>66,473,811</b> | <b>-</b> | <b>-</b>           |
| Net change in fund balances                 | 19,783,730        | 19,549,614          | (1,546,460)            | (15,359,633)        | 1,538,158         | -        | 137,013,181        |
| Fund balance July 1, 2023                   | 262,717,804       | (333,152,076)       | 13,392,732             | 18,149,828          | 11,871,675        | -        | 1,200,727,959      |
| Fund balance June 30, 2024                  | \$ 282,501,534    | \$ (313,602,462)    | \$ 11,846,272          | \$ 2,790,195        | \$ 13,409,833     | \$ -     | \$ 1,337,741,140   |



# **AGENDA ITEM 6E**



| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |   |
|---|---|
| <b>DATE:</b>                                      | September 11, 2024  |
| <b>TO:</b>  | Riverside County Transportation Commission                                  |
| <b>FROM:</b>                                      | Megan Kavand, Toll Finance Manager<br>Sergio Vidal, Chief Financial Officer |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director  |
| <b>SUBJECT:</b>                                   | Monthly Investment Report   |

**STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Receive and file the Monthly Investment Report for the month ended June 30, 2024.

**BACKGROUND INFORMATION:**

The Commission’s investment reports have generally reflected investments primarily concentrated in the Riverside County Pooled Investment Fund as well as investments in mutual funds for sales tax revenue bonds debt service payments.

As a result of significant project financings such as the State Route 91 Corridor Improvement Project (91 Project or 91 CIP) and the Interstate 15 Express Lanes Project (I-15 ELP), the Commission engaged MetLife Investment Management, LLC, formerly Logan Circle Partners, L.P. (MetLife), as the investment manager for the bond proceeds and other required funds. Additionally, the Commission engaged Payden & Rygel Investment Management (Payden & Rygel) to make specific investments for Commission operating funds. The Commission approved initial agreements with the investment managers in May 2013 following a competitive procurement and has extended the agreements through the annual recurring contracts process.

MetLife invested the debt proceeds and subsequent other required contributions for the 91 Project and I-15 ELP in separate accounts of the Short-Term Actively Managed Program (STAMP). The Commission completed the 91 Project financing in 2013, the I-15 ELP and 91 Project completion financing (2017 Financing) in July 2017 and the 2021 91 Project refinancing (2021 Financing) in October 2021. Consistent with financing expectations, the Commission expended all 91 Project debt proceeds and equity contributions, except for the toll revenue bonds debt service reserve, and subsequent to commencement of operations, established other required accounts. Additionally, the Commission has fully expended the 2017 Financing bond proceeds for the I-15 ELP except for the Ramp Up Fund which is required to be maintained until the second anniversary of the TIFIA debt service payment commencement date.

The monthly investment report for June 2024, as required by state law and Commission policy, reflects the investment activities resulting from the 91 Project, 2017 Financing, 2021 Financing and available operating cash. As of June 30, 2024, the Commission’s cash and investments were comprised of the following:

| CASH AND INVESTMENTS PORTFOLIO                | AMOUNTS <sup>1</sup>    |
|---|-------------------------|
| Operating                                     | \$ 959,827,051          |
| Trust   | 359,882,263             |
| Commission-managed                            | 241,133,318             |
| STAMP for 91 CIP                              | 60,553,959              |
| STAMP for 2017 Financing                      | 16,234,988              |
| <b>Total</b>                                  | <b>\$ 1,637,631,579</b> |
| Note: <sup>1</sup> Unreconciled and unaudited |                         |

As of June 30, 2024, the Commission’s cash and investments are in compliance with both the Commission’s investment policy adopted on October 11, 2023, and permitted investments described in the indenture for the Commission’s sales tax revenue bonds and the master indentures for the Commission’s toll revenue bonds. Additionally, the Commission has adequate cash flows for the next six months.

**FISCAL IMPACT:**

This is an information item. There is no fiscal impact.

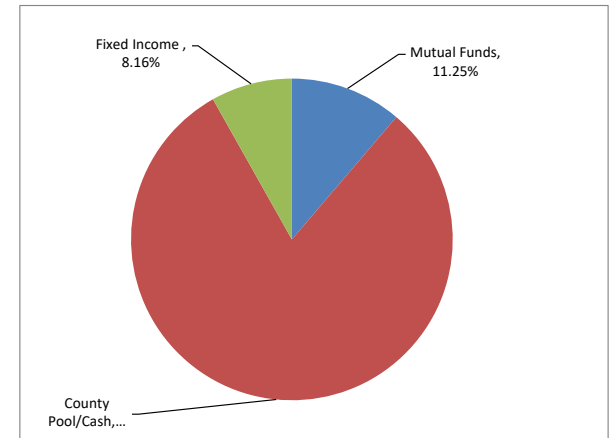
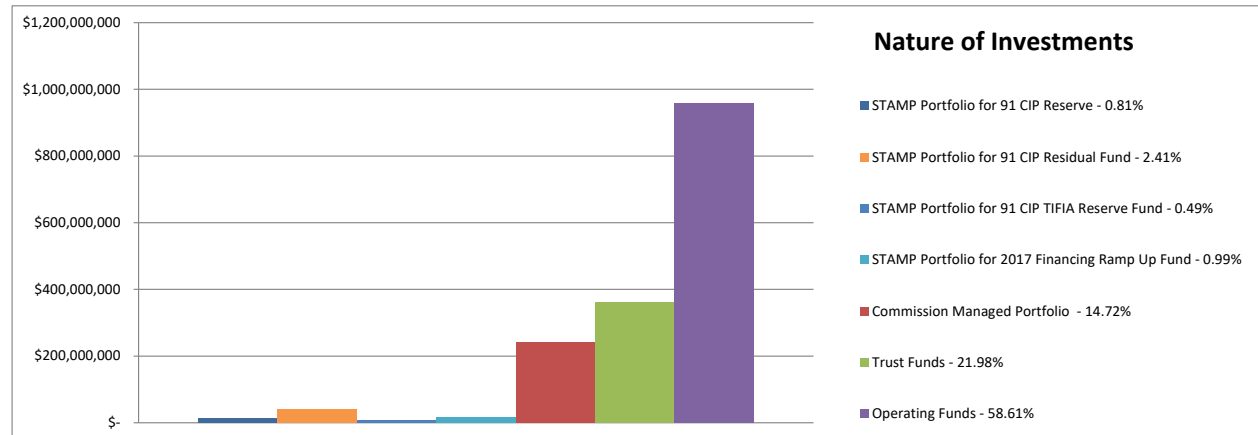
Attachment: Investment Portfolio Report



Riverside County Transportation Commission  
Investment Portfolio Report  
Period Ended: June 30, 2024

|   | STATEMENT<br>BALANCE <sup>1</sup> | FINANCIAL<br>INSTUTION | STATEMENTS             | RATING<br>MOODY'S /<br>S&P | COUPON<br>RATE | PAR<br>VALUE | PURCHASE<br>DATE | MATURITY<br>DATE       | YIELD TO<br>MATURITY | PURCHASE<br>COST | MARKET<br>VALUE | UNREALIZED<br>GAIN (LOSS) |
|---|-----------------------------------|------------------------|------------------------|----------------------------|----------------|--------------|------------------|------------------------|----------------------|------------------|-----------------|---------------------------|
| <b>OPERATING FUNDS</b>  |                                   |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| City National Bank Deposits   | 18,627,116                        | City National Bank     | Available upon request | A3/BBB+                    | N/A            |              |                  |                        | N/A                  |                  |                 |                           |
| County Treasurer's Pooled Investment Fund                               | 941,199,935                       | County Treasurer       | Available upon request | Aaa-bf                     |                |              |                  |                        |                      |                  |                 |                           |
| <b>Subtotal Operating Funds</b>   | <b>959,827,051</b>                |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| <b>FUNDS HELD IN TRUST</b>  |                                   |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| County Treasurer's Pooled Investment Fund:<br>Local Transportation Fund | 359,882,263                       | County Treasurer       | Available upon request |                            |                |              |                  | Available upon request |                      |                  |                 |                           |
| <b>Subtotal Funds Held in Trust</b>                                     | <b>359,882,263</b>                |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| <b>COMMISSION MANAGED PORTFOLIO</b>                                     |                                   |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| US Bank Payden & Rygel Operating  | 56,884,481                        | US Bank                | Available upon request |                            |                |              |                  | Available upon request |                      |                  |                 |                           |
| First American Government Obligation Fund                               | 184,248,837                       | US Bank                | Available upon request | N/A                        | N/A            |              |                  |                        | N/A                  |                  |                 |                           |
| <b>Subtotal Commission Managed Portfolio</b>                            | <b>241,133,318</b>                |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| <b>STAMP PORTFOLIO for 91 CIP</b>                                       |                                   |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| 2013 Series A & Series B Reserve Fund                                   | 13,186,536                        | US Bank                | Available upon request |                            |                |              |                  | Available upon request |                      |                  |                 |                           |
| 2021 Series B Reserve Fund  | 39,411,323                        | US Bank                | Available upon request |                            |                |              |                  | Available upon request |                      |                  |                 |                           |
| 2021 Series C Reserve Fund  | 7,956,101                         | US Bank                | Available upon request |                            |                |              |                  | Available upon request |                      |                  |                 |                           |
| <b>Subtotal STAMP Portfolio - 91 CIP</b>                                | <b>60,553,959</b>                 |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| <b>STAMP PORTFOLIO for 2017 Financing</b>                               |                                   |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| Ramp Up Fund  | 16,234,988                        | US Bank                | Available upon request |                            |                |              |                  | Available upon request |                      |                  |                 |                           |
| <b>Subtotal STAMP Portfolio - 2017 Financing</b>                        | <b>16,234,988</b>                 |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| <b>TOTAL All Cash and Investments</b>                                   | <b>\$ 1,637,631,579</b>           |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |

Notes:  
<sup>1</sup> Unreconciled and unaudited





# **AGENDA ITEM 6F**



| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |   |
|---|---|
| <b>DATE:</b>                                      | September 11, 2024  |
| <b>TO:</b>  | Riverside County Transportation Commission                                  |
| <b>FROM:</b>                                      | Megan Kavand, Toll Finance Manager<br>Sergio Vidal, Chief Financial Officer |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director  |
| <b>SUBJECT:</b>                                   | Monthly Investment Report   |

**STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Receive and file the Monthly Investment Report for the month ended July 31, 2024.

**BACKGROUND INFORMATION:**

The Commission’s investment reports have generally reflected investments primarily concentrated in the Riverside County Pooled Investment Fund as well as investments in mutual funds for sales tax revenue bonds debt service payments.

As a result of significant project financings such as the State Route 91 Corridor Improvement Project (91 Project or 91 CIP) and the Interstate 15 Express Lanes Project (I-15 ELP), the Commission engaged MetLife Investment Management, LLC, formerly Logan Circle Partners, L.P. (MetLife), as the investment manager for the bond proceeds and other required funds. Additionally, the Commission engaged Payden & Rygel Investment Management (Payden & Rygel) to make specific investments for Commission operating funds. The Commission approved initial agreements with the investment managers in May 2013 following a competitive procurement and has extended the agreements through the annual recurring contracts process.

MetLife invested the debt proceeds and subsequent other required contributions for the 91 Project and I-15 ELP in separate accounts of the Short-Term Actively Managed Program (STAMP). The Commission completed the 91 Project financing in 2013, the I-15 ELP and 91 Project completion financing (2017 Financing) in July 2017 and the 2021 91 Project refinancing (2021 Financing) in October 2021. Consistent with financing expectations, the Commission expended all 91 Project debt proceeds and equity contributions, except for the toll revenue bonds debt service reserve, and subsequent to commencement of operations, established other required accounts. Additionally, the Commission has fully expended the 2017 Financing bond proceeds for the I-15 ELP except for the Ramp Up Fund which is required to be maintained until the second anniversary of the TIFIA debt service payment commencement date.

The monthly investment report for July 2024, as required by state law and Commission policy, reflects the investment activities resulting from the 91 Project, 2017 Financing, 2021 Financing and available operating cash. As of July 31, 2024, the Commission’s cash and investments were comprised of the following:

| CASH AND INVESTMENTS PORTFOLIO                | AMOUNTS <sup>1</sup>    |
|---|-------------------------|
| Operating                                     | \$ 951,135,461          |
| Trust   | 330,700,367             |
| Commission-managed                            | 263,022,566             |
| STAMP for 91 CIP                              | 61,529,083              |
| STAMP for 2017 Financing                      | 16,380,014              |
| <b>Total</b>                                  | <b>\$ 1,622,767,491</b> |
| Note: <sup>1</sup> Unreconciled and unaudited |                         |

As of July 31, 2024, the Commission’s cash and investments are in compliance with both the Commission’s investment policy adopted on October 11, 2023, and permitted investments described in the indenture for the Commission’s sales tax revenue bonds and the master indentures for the Commission’s toll revenue bonds. Additionally, the Commission has adequate cash flows for the next six months.

**FISCAL IMPACT:**

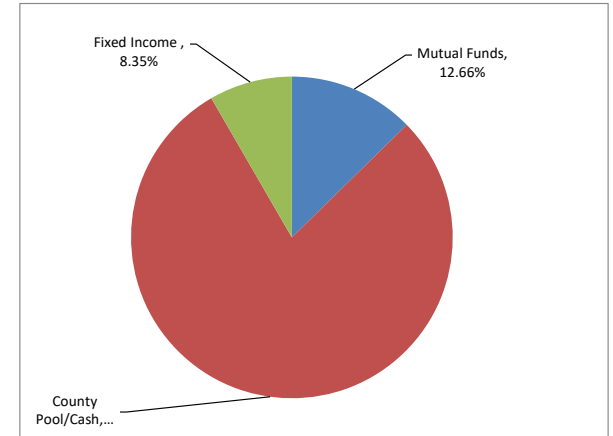
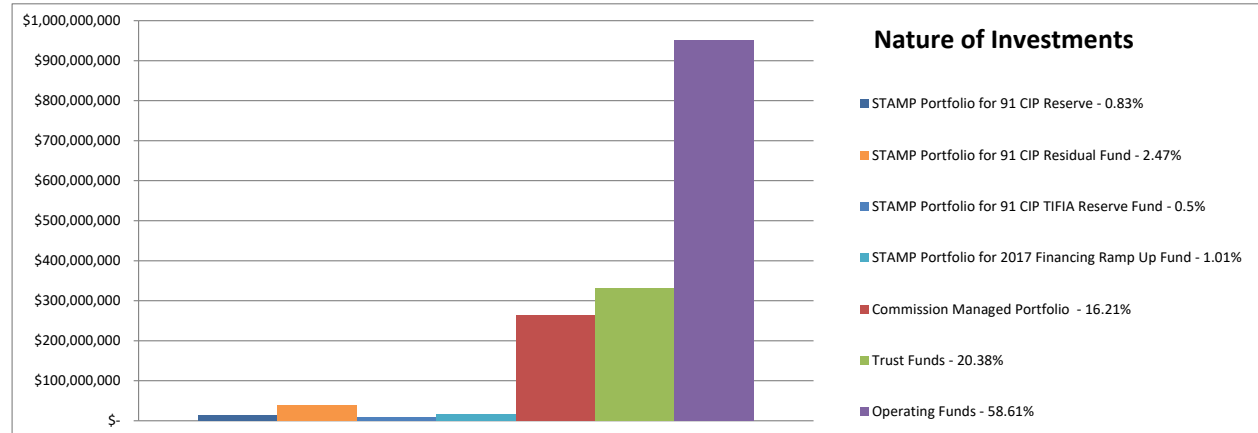
This is an information item. There is no fiscal impact.

Attachment: Investment Portfolio Report

Riverside County Transportation Commission  
Investment Portfolio Report  
Period Ended: July 31, 2024

|   | STATEMENT<br>BALANCE <sup>1</sup> | FINANCIAL<br>INSTUTION | STATEMENTS             | RATING<br>MOODY'S /<br>S&P | COUPON<br>RATE | PAR<br>VALUE | PURCHASE<br>DATE | MATURITY<br>DATE       | YIELD TO<br>MATURITY | PURCHASE<br>COST | MARKET<br>VALUE | UNREALIZED<br>GAIN (LOSS) |
|---|-----------------------------------|------------------------|------------------------|----------------------------|----------------|--------------|------------------|------------------------|----------------------|------------------|-----------------|---------------------------|
| <b>OPERATING FUNDS</b>  |                                   |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| City National Bank Deposits   | 18,617,276                        | City National Bank     | Available upon request | A3/BBB+                    | N/A            |              |                  |                        | N/A                  |                  |                 |                           |
| County Treasurer's Pooled Investment Fund                               | 932,518,185                       | County Treasurer       | Available upon request | Aaa-bf                     |                |              |                  |                        |                      |                  |                 |                           |
| <b>Subtotal Operating Funds</b>   | <b>951,135,461</b>                |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| <b>FUNDS HELD IN TRUST</b>  |                                   |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| County Treasurer's Pooled Investment Fund:<br>Local Transportation Fund | 330,700,367                       | County Treasurer       | Available upon request |                            |                |              |                  | Available upon request |                      |                  |                 |                           |
| <b>Subtotal Funds Held in Trust</b>                                     | <b>330,700,367</b>                |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| <b>COMMISSION MANAGED PORTFOLIO</b>                                     |                                   |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| US Bank Payden & Rygel Operating  | 57,551,980                        | US Bank                | Available upon request |                            |                |              |                  | Available upon request |                      |                  |                 |                           |
| First American Government Obligation Fund                               | 205,470,586                       | US Bank                | Available upon request | N/A                        | N/A            |              |                  |                        | N/A                  |                  |                 |                           |
| <b>Subtotal Commission Managed Portfolio</b>                            | <b>263,022,566</b>                |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| <b>STAMP PORTFOLIO for 91 CIP</b>                                       |                                   |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| 2013 Series A & Series B Reserve Fund                                   | 13,397,314                        | US Bank                | Available upon request |                            |                |              |                  | Available upon request |                      |                  |                 |                           |
| 2021 Series B Reserve Fund  | 40,047,673                        | US Bank                | Available upon request |                            |                |              |                  | Available upon request |                      |                  |                 |                           |
| 2021 Series C Reserve Fund  | 8,084,095                         | US Bank                | Available upon request |                            |                |              |                  | Available upon request |                      |                  |                 |                           |
| <b>Subtotal STAMP Portfolio - 91 CIP</b>                                | <b>61,529,083</b>                 |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| <b>STAMP PORTFOLIO for 2017 Financing</b>                               |                                   |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| Ramp Up Fund  | 16,380,014                        | US Bank                | Available upon request |                            |                |              |                  | Available upon request |                      |                  |                 |                           |
| <b>Subtotal STAMP Portfolio - 2017 Financing</b>                        | <b>16,380,014</b>                 |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |
| <b>TOTAL All Cash and Investments</b>                                   | <b>\$ 1,622,767,491</b>           |                        |                        |                            |                |              |                  |                        |                      |                  |                 |                           |

Notes:  
<sup>1</sup> Unreconciled and unaudited







# **AGENDA ITEM 6G**



| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |  |
|---|--|
| <b>DATE:</b>                                      | September 11, 2024   |
| <b>TO:</b>  | Riverside County Transportation Commission   |
| <b>FROM:</b>                                      | Audit Ad Hoc Committee<br>Daniel Hernandez, Accounting Supervisor<br>Sergio Vidal, Chief Financial Officer |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director   |
| <b>SUBJECT:</b>                                   | California Department of Transportation Project Audit Results  |

**AUDIT AD HOC COMMITTEE AND STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Receive and file a report (No. 23-2660-060) on the California Department of Transportation (Caltrans) Project Audit performed by the California Department of Finance, Office of State Audits and Evaluations (OSAE).

**BACKGROUND INFORMATION:**

The California Transportation Commission (CTC), upon appropriation by the Legislature, allocates state funds to Caltrans to implement various programs. Caltrans’s Local Assistance Program oversees more than \$1 billion of state and federal funds made available annually to cities, counties, and regional agencies for the purpose of improving its transportation infrastructure or providing transportation services. This funding comes from various federal and state programs specifically designed to assist the transportation needs of local agencies.

The Riverside County Transportation Commission (RCTC) was awarded funding totaling \$296.3 million for the Interstate 15 Express Lanes, I-15/State Route 91 Express Lanes Connector, and I-15/Railroad Canyon Road Interchange projects as summarized in the table below:

| <b>Project</b>                        | <b>Project Description</b>  | <b>Funding Source</b>  | <b>Amount*</b> |
|---------------------------------------|---|--|----------------|
| I-15 Express Lanes                    | Construct two toll express lanes in each direction, with associated improvements on I-15 from Cajalco Road to SR-60 through cities of Corona, Norco, Eastvale and Jurupa Valley in Riverside County | Federal - Surface Transportation Block Grant Program (STBG) and Congestion Mitigation and Air Quality Improvement Program (CMAQ) | \$98.4         |
| I-15/SR-91 Express Lanes Connector    | Providing a median direct connector for tolled express lanes from southbound I-15 to westbound SR-91 and from eastbound SR-91 to northbound I-15  | SB 132   | 180.0          |
| I-15/Railroad Canyon Road Interchange | Widen Railroad Canyon Road under the freeway to eight lanes and associated improvements to improve traffic operations   | SB1 Local Partnership Program  | 15.0           |
|                                       |   | State Transportation Improvement Program (STIP)  | 2.9            |
|                                       |   |  | <b>\$296.3</b> |

\*In millions

At the request of the Caltrans Independent Office of Audits and Investigations, the OSAE conducted a routine audit (No. 23A.PJCT05) commencing in March 2023 of the projects noted above to determine whether:

1. Project costs were allowable, adequately supported by accounting records and source documents, and in compliance with relevant criteria (Criteria 1);
2. Project deliverables/outputs were consistent with the project scope and schedule (Criteria 2); and
3. Benefits/outcomes were achieved and reported in accordance with applicable requirements (Criteria 3).

The audit results included within the OSAE report dated December 21, 2023, are summarized in the table below:

| Project                               | Project Status          | Reimbursed Costs* | Criteria |         |         | Findings   |
|---------------------------------------|-------------------------|-------------------|----------|---------|---------|--|
|                                       |                         |                   | 1        | 2       | 3       |  |
| I-15 Express Lanes                    | Construction Complete   | \$ 96.5           | Met      | Met**   | N/A***  | None   |
| I-15/SR-91 Express Lanes Connector    | Construction Incomplete | 180.0             | Met      | Met     | N/A***  | None   |
| I-15/Railroad Canyon Road Interchange | Construction Complete   | 16.5              | Met      | Not Met | Not Met | RCTC did not submit a completion report to Caltrans within six months of project opening to public in April 2022 |
|                                       |                         | <b>\$ 293.0</b>   |          |         |         |  |

\*In millions

\*Although project was behind schedule, RCTC appropriately informed Caltrans of the delay

\*\*Not applicable as reporting of benefits/outcomes are not a requirement of the project

The I-15 Express Lanes and I-15/SR-91 Express Lanes Connector projects met applicable criteria. The I-15/Railroad Canyon Road Interchange project included a finding indicating RCTC did not submit a Completion Report to Caltrans on the scope of the completed project, its estimated final cost, estimated schedule, and project benefits/outcomes as compared to those included in the executed project agreements to enable Caltrans, CTC, or other interested parties to assess whether the project had met its intended goals.

On February 13, 2024, Caltrans Division of Labor Assistance (DLA) issued a corrective action plan for the finding described above. Along with the need to submit a Completion Report to Caltrans, the DLA also required RCTC to develop or update grant management procedures.

On February 29, 2024, RCTC submitted the Completion Report to Caltrans for the I-15/Railroad Canyon Road Interchange project. Furthermore, RCTC also submitted grant management procedures to Caltrans demonstrating its commitment to an effective internal control system that will help ensure it remains compliant with grantor agency requirements.

**FISCAL IMPACT:**

There is no fiscal impact for this item.

**Attachments:**

- 1) Caltrans, RCTC Project Audit
- 2) Caltrans, Corrective Action Plan Letter





# INSPECTOR GENERAL

California Department of Transportation

## Riverside County Transportation Commission

### Project Audit



**Independent Office of Audits and Investigations**

**Bryan Beyer**, Inspector General

**Diana Antony**, Chief Deputy

December 2023

23A.PJCT05



## Inspector General

California Department of Transportation

Bryan Beyer, Inspector General

Diana Antony, Chief Deputy

December 29, 2023

Tony Tavares  
Director  
California Department of Transportation  
1120 N Street  
Sacramento, CA 95814

### Final Report — Riverside County Transportation Commission, Project Audit

Dear Director Tavares:

On behalf of the Independent Office of Audits and Investigations (IOAI), the California Department of Finance, Office of State Audits and Evaluations (Finance) completed its audit of the Riverside County Transportation Commission (RCTC). Finance audited the costs that the RCTC incurred related to three projects, of which the California Department of Transportation reimbursed the RCTC a total of \$292,940,143.

Enclosed is the final report, which includes the RCTC's response to the draft report. Finance issued the draft report on November 22, 2023 and subsequently made a change to Finding 1, paragraph 2 to provide further clarification. The final report is a matter of public record and will be posted on IOAI's website.

A Corrective Action Plan (CAP) addressing the recommendations is due from the California Department of Transportation 60 days from receipt of this letter. Thereafter, CAP updates will be required every 6 months and 1 year from the report issuance date, until all findings have been addressed. The CAP should be sent to [ioai.reports@dot.ca.gov](mailto:ioai.reports@dot.ca.gov).

If you have any questions regarding this report, please contact our office at (916) 323-7111.

Sincerely,

Diana C. Antony, CPA, CIG  
Chief Deputy Inspector General

Gavin Newsom, Governor

Independent Office of Audits and Investigations  
P.O. Box 942874, MS-2 (916) 323-7111  
Sacramento, CA 94274-0001 <https://oig.dot.ca.gov>



Tony Tavares  
December 29, 2023  
Page 2

cc: Michael Keever, Chief Deputy Director, California Department of Transportation  
Catalino A. Pining III, District Director, District 8, California Department of Transportation  
Ben Shelton, Audit Chief, Internal Audits Office, California Department of Transportation  
Anne Mayer, Executive Director, Riverside County Transportation Commission  
Sergio Vidal, Chief Financial Officer, Riverside County Transportation Commission  
Erik Galloway, Project Delivery Director, Riverside County Transportation Commission  
Rodney Whitfield, Director, Financial Services, Federal Highway Administration  
Grace Regidor, Transportation Finance Specialist, Financial Services, Federal Highway  
Administration

23A.PJCT05



## **Riverside County Transportation Commission**

Project Numbers 0817000076, 0817000239, and 0818000047

Report No. 23-2660-060  
December 2023

**Team Members**

Cheryl L. McCormick, CPA, Chief  
Rebecca G. McAllister, CPA, Assistant Chief  
Marilyn Standing Horse, CPA, Assistant Chief  
Humberto E. Cervantes, CPA, Manager  
Andrea Cortez, Supervisor  
Jeffrey Neller, Lead  
Sydney Carrera  
Ashley Monterrey  
John Yang

Final reports are available on our website at <https://www.dof.ca.gov>.

You can contact our office at:

California Department of Finance  
Office of State Audits and Evaluations  
915 L Street, 6<sup>th</sup> Floor  
Sacramento, CA 95814  
(916) 322-2985

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December 21, 2023

Bryan Beyer, Inspector General  
Independent Office of Audits and Investigations  
California Department of Transportation  
1120 N Street  
Sacramento, CA 95814

**Final Report—Riverside County Transportation Commission, California Department of Transportation Project Audits**

The California Department of Finance, Office of State Audits and Evaluations, has completed its audit of the Riverside County Transportation Commission's (RCTC) projects listed below, California Department of Transportation Audit Number 23A.PJCT05:

| <u>Project Number</u> | <u>Project Name</u>                   |
|-----------------------|---------------------------------------|
| 0817000076            | I-15 Express Lanes Project            |
| 0817000239            | I-15/SR 91 Express Lanes Connector    |
| 0818000047            | I-15 Railroad Canyon Road Interchange |

The enclosed report is for your information and use. RCTC's response to the report finding is incorporated into this final report. RCTC agreed with our finding. A change was made to the draft report's Finding 1 paragraph 2, for clarity. This report will be placed on our website.

If you have any questions regarding this report, please contact Rick Cervantes, Manager, or Andrea Cortez, Supervisor, at (916) 322-2985.

Sincerely,

Cheryl L. McCormick, CPA  
Chief, Office of State Audits and Evaluations

cc: Diana Antony, Chief Deputy Inspector General, Independent Office of Audits and Investigations  
Frances Parmelee, Deputy Inspector General, Independent Office of Audits and Investigations

# BACKGROUND, SCOPE, AND METHODOLOGY

## BACKGROUND

The California Transportation Commission (CTC), upon appropriation by the Legislature, allocates state funds to the California Department of Transportation (Caltrans) to implement various programs.

Caltrans's Local Assistance Program oversees more than \$1 billion of state and federal funds made available annually to over 600 cities, counties, and regional agencies for the purpose of improving their transportation infrastructure or providing transportation services. This funding comes from various federal and state programs specifically designed to assist the transportation needs of local agencies.<sup>7</sup>

The Federal Highway Administration program awarded \$98.4 million in federal funds to the Riverside County Transportation Commission (RCTC), with Caltrans administering the funding for the federal project. Additionally, RCTC received \$180 million from Senate Bill (SB) 132 of 2016. Finally, RCTC was awarded \$15 million under SB 1, also known as the Road Repair and Accountability Act of 2017, and \$2.9 million in State Transportation Improvement Program (STIP) funding for one project. The programs for the three projects are described in the text box. The three projects were as follows:

- **0817000076 I-15 Express Lanes Project** - \$98.4 million in Surface Transportation Block Grant Program (STBG) and Congestion Mitigation and Air Quality

## PROGRAM DESCRIPTION

**Federal:** Federal funds included Surface Transportation Block Grant Program (STBG) and Congestion Mitigation and Air Quality Improvement Program (CMAQ). STBG promotes flexibility in State and local transportation decisions and provides flexible funding to best address state and local transportation needs.<sup>1</sup> CMAQ provides a flexible funding source to State and local governments for transportation projects and programs to help meet the requirements of the Clean Air Act.<sup>2</sup>

**SB 132:** SB 132 of 2016 provides local assistance for the Riverside County Transportation Efficiency Corridor, including funds from the State Highway Account made available for three transportation projects on the State Highway System, within the county of Riverside (On-System Projects), and two transportation projects within the county of Riverside but outside the state highway system right of way (Off-system Projects).<sup>3</sup>

**SB1 LPP:** SB 1 created the Local Partnership Program (LPP) and continuously appropriates \$200 million annually to local and regional transportation agencies which have taxes or fees dedicated solely for transportation improvements.<sup>4</sup>

**STIP/RIP:** The State Transportation Improvement Program (STIP) is the biennial five-year plan adopted by the CTC for future allocations of certain state transportation funds for state highway improvements, intercity rail, and regional highway and transit improvements.<sup>5</sup> The STIP includes Regional Improvement Program (RIP) funds for transportation improvement projects needed to improve transportation within the region.<sup>6</sup>

<sup>1</sup> Excerpt obtained from the Federal Highway Administration website <https://www.fhwa.dot.gov/specialfunding/>.

<sup>2</sup> Excerpt obtained from the Federal Highway Administration website <https://www.fhwa.dot.gov/bipartisan-infrastructure-law/cmaq.cfm>.

<sup>3</sup> Excerpt obtained from Master Funding Agreement 08-1659.

<sup>4</sup> Excerpt obtained from CTC website <https://catc.ca.gov/programs/sb1/local-partnership-program>.

<sup>5</sup> Excerpt obtained from CTC website <https://catc.ca.gov/programs/state-transportation-improvement-program>.

<sup>6</sup> Excerpt obtained from Caltrans's Division of Local Assistance website <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapa/g25.pdf?%20page%20of%2055>.

<sup>7</sup> Excerpt obtained from Caltrans's Division of Local Assistance website <http://www.dot.ca.gov/localassistance/index.html>.

Improvement Program (CMAQ) federal funds to construct two toll express lanes in each direction, with associated improvements on Interstate 15 (I-15) from Cajalco Road to State Route (SR) 60 through the cities of Corona, Norco, Eastvale and Jurupa Valley in Riverside County.

- **0817000239 I-15/SR 91 Express Lanes Connector** - \$180 million in SB 132 funds to improve traffic operations on the I-15 corridor and the SR 91 corridor between the I-15 and SR 91 Interchange and Hidden Valley Parkway along I-15 and between Lincoln Avenue and South Promenade Avenue along SR 91. The project will focus on providing a median direct connector for tolled express lanes from southbound I-15 to westbound SR 91 and from eastbound SR 91 to northbound I-15.
- **0818000047 I-15/Railroad Canyon Road Interchange**: \$15 million in SB 1 Local Partnership Program (LPP) and \$2.9 million in STIP funds to widen the Railroad Canyon Road under the freeway to eight lanes with dual left turn lanes to the southbound on-ramp, reconstruct the northbound ramps to a hook configuration to Grape Street, eliminate the existing northbound exit ramp and Railroad Canyon Road, construct auxiliary and deceleration lanes on I-15, and widen the Railroad Canyon southbound exit ramp. For the LPP-funded portion of the project, RCTC was required to provide a one-to-one match of Measure A local tax revenue. No other projects have a match requirement.

## SCOPE

As requested by Caltrans's Independent Office of Audits and Investigations, the California Department of Finance, Office of State Audits and Evaluations, audited the projects described in the Background section of this report. The *Summary of Projects Reviewed*, including the audit period and the reimbursed expenditures, is presented in Appendix A.

The audit objectives were to determine whether:

1. Project costs were allowable, adequately supported by accounting records and source documents, and in compliance with relevant criteria.
2. Project deliverables/outputs were consistent with the project scope and schedule.
3. Benefits/outcomes were achieved and reported in accordance with applicable requirements.

At the time of fieldwork in August 2023, construction was complete for projects 0817000076 and 0818000047. However, project 0817000239 was not completed. Only project 0818000047 had a reporting requirement for benefits/outcomes.

RCTC's management is responsible for ensuring accurate financial reporting; compliance with executed project agreements, federal and state regulations, and applicable program guidelines; and the adequacy of its job cost system to accumulate and segregate reasonable, allocable, and allowable expenditures. Caltrans and CTC are responsible for the state-level administration of the programs.

## **METHODOLOGY**

In planning the audit, we gained an understanding of the projects and respective programs, and identified relevant criteria by interviewing Caltrans and RCTC personnel, and reviewing the executed project agreements and amendments, Caltrans's/CTC's program guidelines, and applicable state and federal regulations.

We conducted a risk assessment, including evaluating whether RCTC's key internal controls significant to our audit objectives were properly designed, implemented, and operating effectively. Key Internal controls evaluated focused on procurement, reimbursement request preparation, review and approval processes for expenditures and change orders, project deliverables/outputs completion, and project benefits/outcomes reporting. Our assessment included conducting interviews with RCTC personnel, observing processes, and testing transactions related to construction phase expenditures, contract procurement, project deliverables/outputs, and project benefits/outcomes.

Additionally, we assessed the reliability of the data used in RCTC's vendor activity report generated from its financial system, Eden Financial System. To assess the reliability of the data, we interviewed RCTC staff, reviewed information process flows, reviewed system controls, and performed data testing. We determined that the vendor activity report from the Eden Financial System was sufficiently reliable. Lastly, we determined verification of the reliability of other data from Eden Financial System was not necessary because other sufficient evidence was available to address the audit objectives.

Based on the results of our planning, we developed specific methods for gathering evidence to obtain reasonable assurance to address the audit objectives. Our methods are detailed in the Table of Methodologies.



### Table of Methodologies

| Audit Objective   | Methods   |
|---|---|
| <p><b>Objective 1:</b><br/>To determine whether RCTC's project costs were allowable, adequately supported by accounting records and source documents, and in compliance with relevant criteria.</p> | <ul style="list-style-type: none"> <li>• For project 0817000076, reviewed the design-build contract to determine whether the project was appropriately advertised and awarded to the lowest, responsible bidder by reviewing contractor procurement records, such as project advertisements, bidding evaluation documents, and awarded contract agreement, and comparing to RCTC's policies and procedures.</li> <li>• Verified the design-build contract for project 0817000076 was extended to incorporate work for project 0817000239 in accordance with Assembly Bill 115 (Chapter 20, Statutes of 2017), which authorized RCTC to amend the existing design-build contract to accelerate project delivery.</li> <li>• For all projects, determined whether the construction project management firm was selected based on demonstrated competence and professional qualifications by reviewing the procurement packet which included the firm's qualifications and RCTC's justification for renewing the contract.</li> <li>• Determined if selected reimbursed costs were allowable, project-related, incurred within the audit period, and supported by reviewing accounting records, progress payment estimates, invoices, and canceled checks, and comparing to relevant criteria.             <ul style="list-style-type: none"> <li>○ For project 0817000076, two construction progress payment estimates were selected based on quantitative significance.</li> <li>○ For project 0817000239, three construction progress payment estimates, and five construction engineering invoices were selected based on quantitative significance.</li> <li>○ For project 0818000047, two construction progress payment estimates were selected based on quantitative significance.</li> </ul> </li> <li>• For project 0818000047, determined if selected match costs were allowable, project-related, incurred within the audit period, and supported by reviewing accounting records, progress payment estimates, invoices, and canceled checks, and comparing to relevant criteria. In addition, verified the one-to-one match was met by comparing local funds charged to the project to the reimbursed LPP costs.</li> <li>• Determined if selected contract change orders (CCO) were within the scope of work, not a contract duplication, completed within the audit period, supported, and properly authorized, by reviewing the CCOs and contractor correspondence.             <ul style="list-style-type: none"> <li>○ For project 0817000239, selected one quantitatively significant CCO.</li> <li>○ For project 0818000047, selected one quantitatively significant CCO.</li> </ul> </li> <li>• For all three projects, evaluated whether duplicate payments occurred by performing an analytical procedure to ensure vendor invoices were not paid multiple times.</li> </ul> |



| Audit Objective  | Methods   |
|--|---|
| <p><b>Objective 2:</b><br/>To determine whether deliverables/outputs were consistent with the project scopes and schedule.</p>               | <ul style="list-style-type: none"> <li>• For the three projects, determined whether selected project deliverables/outputs were consistent with the project scope by reviewing the project agreements and performing site visits to verify project existence.</li> <li>• For projects 0817000239 and 0818000047, determined whether selected project deliverables/outputs were completed on schedule by reviewing project files, project agreements or approved amendments, the Project Programming Request, and quarterly reports.</li> </ul> |
| <p><b>Objective 3:</b><br/>To determine whether benefits/outcomes were achieved and reported in accordance with applicable requirements.</p> | <ul style="list-style-type: none"> <li>• For project 0818000047, determined whether benefits/outcomes were achieved and adequately reported by reviewing the Project Programming Request and interviewing Caltrans and RCTC personnel.</li> </ul>   |

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

---

## CONCLUSION

Based on the procedures performed and evidence gathered, we obtained reasonable assurance the project costs were allowable, adequately supported by accounting records and source documents, and in compliance with relevant criteria.

We also obtained reasonable assurance the project deliverables/outputs were consistent with the project scopes and schedules. Although project 081700076 was behind schedule, RCTC appropriately informed Caltrans of the delay. However, the Completion Report for project 081800047 was not submitted, as described in Finding 1.

Additionally, for project 081800047, RCTC did not report actual benefits/outcomes, as described in Finding 1.

## FINDINGS AND RECOMMENDATIONS

### **Finding 1: Project Completion Not Submitted and Benefits/Outcomes Were Not Reported to Caltrans.**

For project 081800047, RCTC did not submit a Completion Report to Caltrans within six months of the project opening to the public in April 2022. The Completion Report was due October 2022 and had not been submitted as of the end of our fieldwork in August 2023. In addition, RCTC did not report the benefits/outcomes of the project to Caltrans as required.

RCTC stated they were informed by Caltrans it was not required to report benefits/outcomes. RCTC was also awaiting two Relief of Maintenance from Caltrans before it could proceed beyond the quarterly progress reporting and submit the Completion Report in Caltrans's California State Multi-Modal Accounting Reporting Tool (CalSMART). Additionally, RCTC did not update the planned end of construction date within the CalSMART system after the project was completed. Without the revised date, CalSMART would not allow the submission of the Completion Report. RCTC did not request assistance from Caltrans.

RCTC is responsible for reporting project benefits/outcomes and maintaining documentation supporting the Completion Report. CTC's SB 1 Accountability and Transparency Guidelines, section D (Follow-Up Accountability), subsection 1 states within six months of construction contract acceptance or the project becoming operable (open to the public), whichever comes sooner, the implementing agency shall provide a Completion Report to Caltrans on the scope of the completed project, its estimated final cost, estimated schedule, and project benefits as compared to those included in the executed project agreements. Additionally, the Completion Report shall describe the methodologies and assumptions used to evaluate how the project benefits were calculated as compared to methodologies and assumptions used in the executed project agreements. Documentation used for the benefit evaluation shall be preserved and made available for review if requested.

By not reporting on whether the benefits/outcomes were achieved, Caltrans, CTC, or other interested parties would not know whether the project had met its intended goals.

**Recommendations:**

- A. Coordinate with Caltrans SB 1 Program Coordinators to facilitate the submission of the Completion Report for project 0818000047, including the evaluation of project benefits/outcomes achieved.
- B. Review the program guidelines to ensure a clear understanding of the reporting requirements and ensure all project documentation is maintained, including data, methodologies, and assumptions used to support the benefits/outcomes reported to Caltrans.

# APPENDIX A

The following acronyms are used throughout Appendix A.

- California Department of Transportation: Caltrans
- Congestion Mitigation and Air Quality Improvement Program: CMAQ
- Level of Service: LOS
- Local Partnership Program: LPP
- Senate Bill: SB
- State Transportation Improvement Program (STIP)/ Regional Improvement Program (RIP): STIP/RIP
- State Route: SR
- Surface Transportation Block Grant Program: STBG

## Summary of Projects Reviewed

| Project Number | Reimbursed Costs | Project Status | Expenditures In Compliance | Deliverables/ Outputs Consistent | Benefits/ Outcomes Achieved | Benefits/ Outcomes Adequately Reported | Page |
|----------------|------------------|----------------|----------------------------|----------------------------------|-----------------------------|--|------|
| 0817000076     | \$ 96,451,074    | C              | Y                          | Y                                | N/A                         | N/A                                    | A-1  |
| 0817000239     | \$180,000,000    | I              | Y                          | Y                                | N/A                         | N/A                                    | A-2  |
| 0818000047     | \$ 16,489,069    | C              | Y                          | Y                                | N                           | N                                      | A-3  |

### **Legend**

C = Construction is complete

I = Construction is not complete.

N = No

N/A = Not applicable as reporting of benefits/outcomes are not a requirement of the project.

Y = Yes

**Project Number:** 0817000076

**Project Name:** I-15 Express Lanes Project

**Program Name:** STBG and CMAQ

**Project Description:** Construct two toll express lanes in each direction with associated improvements on I-15 from Cajalco Road to SR 60 through the cities of Corona, Norco, Eastvale and Jurupa Valley in Riverside County.

**Audit Period:** July 21, 2017 through December 31, 2021 for audit objective 1<sup>8</sup>  
July 21, 2017 through August 10, 2023 for audit objectives 2 and 3<sup>9</sup>

**Project Status:** Construction is complete.

#### Schedule of Costs

| Category           | Reimbursed Costs    |
|--------------------|---------------------|
| Construction       | \$96,451,074        |
| <b>Total Costs</b> | <b>\$96,451,074</b> |

#### Results:

##### Compliance—Costs

The project costs were allowable, adequately supported by accounting records and source documents, and in compliance with relevant criteria.

##### Deliverables/Outputs

The construction phase of the project was completed in April 2021. At the time of our fieldwork in August 2023, project deliverables/outputs were consistent with the project scope. Although the project was behind schedule and completed nine months late, RCTC appropriately informed Caltrans of the delay. Additionally, RCTC does not have a reporting requirement for deliverables/outputs for the project.

##### Benefits/Outcomes

This project does not have a reporting requirement for benefits/outcomes.

<sup>8</sup> The audit period end date reflects the billing period end date of the last reimbursement claim submitted to and approved by Caltrans.

<sup>9</sup> The audit period end date reflects the end of audit fieldwork date.

**Project Number:** 0817000239

**Project Name:** I-15/SR 91 Express Lanes Connector

**Program Name:** 91 Toll Connector to Interstate 15 – SB 132 Budget Act 2016

**Project Description:** Improve traffic operations on the I-15 corridor and the SR 91 corridor between the I-15 and SR 91 Interchange and Hidden Valley Parkway along I-15 and between Lincoln Avenue and South Promenade Avenue along SR 91. The project will focus on providing a median direct connector for tolled express lanes from southbound I-15 to westbound SR 91 and from eastbound SR 91 to Northbound I-15.

**Audit Period:** April 29, 2017 through October 31, 2022 for audit objective 1<sup>10</sup>  
April 29, 2017 through August 10, 2023 for audit objectives 2 and 3<sup>11</sup>

**Project Status:** Construction is not complete.

#### Schedule of Costs

| Category                                      | Reimbursed Costs     |
|---|----------------------|
| Construction – SB 132 – State Highway Account | \$180,000,000        |
| <b>Total Costs</b>                            | <b>\$180,000,000</b> |

#### Results:

##### Compliance—Costs

The project costs were allowable, adequately supported by accounting records and source documents, and in compliance with relevant criteria.

##### Deliverables/Outputs

There is no required completion date for construction. At the end of our fieldwork in August 2023, project deliverables/outputs were consistent with the project scope and the costs were fully encumbered by the June 30, 2023 deadline.

##### Benefits/Outcomes

This project does not have a reporting requirement for the benefits/outcomes of the project.

<sup>10</sup> The audit period end date reflects the billing period end date of the last reimbursement claim submitted to and approved by Caltrans.

<sup>11</sup> The audit period end date reflects the end of audit fieldwork date.

**Project Number:** 0818000047

**Project Name:** I-15 Railroad Canyon Interchange

**Program Name:** LPP and STIP/RIP

**Project Description:** Widen the Railroad Canyon Road under the freeway to eight lanes with dual left turn lanes to the southbound on-ramp, reconstruct the northbound ramps to a hook configuration to Grape Street, eliminate the existing northbound exit ramp and Railroad Canyon Road, construct auxiliary and deceleration lanes on I-15, and widen the Railroad Canyon southbound exit ramp.

**Audit Period:** December 5, 2019 through September 30, 2022 for audit objective 1<sup>13</sup>  
December 5, 2019 through August 10, 2023 date for audit objectives 2 and 3<sup>14</sup>

**Project Status:** Construction is complete.

#### Schedule of Costs

| Category                | Reimbursed Costs    |
|-------------------------|---------------------|
| Construction – LPP      | \$13,569,069        |
| Construction - STIP/RIP | 2,920,000           |
| <b>Total Costs</b>      | <b>\$16,489,069</b> |

#### Results:

##### Compliance—Costs

The project costs were allowable, adequately supported by accounting records and source documents, and in compliance with relevant criteria. Additionally, the match requirement was met.

##### Deliverables/Outputs

The project was opened to the public on April 15, 2022. At the end of fieldwork in August 2023, project deliverables/outputs were consistent with the project scope and schedule. However, as stated in Finding 1, the completion report was due October 15, 2022, and was not submitted as of August 2023.

##### Benefits/Outcomes

Actual project benefits/outcomes were not reported, as described in Finding 1.

<sup>13</sup> The audit period end date reflects the billing period end date of the last reimbursement claim submitted to and approved by Caltrans.

<sup>14</sup> The audit period end date reflects the end of audit fieldwork date.

| Expected Benefits/Outcomes Reported In the Project Programming Request  | Actual Benefits/Outcomes Reported in the Completion Report | Benefits/Outcomes Achieved |
|---|--|----------------------------|
| Ensure that the Railroad Canyon Road interchange is able to handle the increased traffic volumes while maintaining an acceptable LOS D or better through failure year 2032, at which time the need for phase 2 of the project will be required. Phase 1 will improve operation, safety, and capacity; and enhance economic opportunities in the region. | Not Reported.  | Not Reported.              |
| Relieve traffic congestion in the vicinity of Railroad Canyon Road at the I-15 ramps.   |  |                            |
| Improve overall operations of the I-15/ Railroad Canyon Road interchange and surrounding streets.   |  |                            |
| Accommodate projected 2040 traffic flow and movement at ramp intersections during a.m. and p.m. peak hours on I-15.   |  |                            |
| Ensure ability to handle the increasing flow of traffic while maintaining LOS D on the ramp intersections and LOS E on the ramp merge/diverge points during a.m. and p.m. peak hours.   |  |                            |







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Mailing Address: P.O. Box 12008 Riverside, CA 92502-2208  
951.787.7141 • rctc.org

December 7, 2023

Cheryl L. McCormick, CPA  
Chief, Office of State Audits and Evaluations  
Department of Finance  
915 L Street  
Sacramento, Ca. 95814-3706

Subject: Response to Office of State Audits and Evaluations Confidential Draft Report, Report No. 23-2660-060, Dated November 22, 2023 – Project Number 0818000047 I-15 Railroad Canyon Road Interchange.

Dear Cheryl L. McCormick,

Riverside County Transportation Commission (RCTC) is in receipt of the Confidential Draft Report (Report) for the California Department of Transportation (Caltrans) Audit Number 23A.PJCT05.

RCTC has reviewed the report, and this letter is in response to the finding on the I-15 Railroad Canyon Road Interchange (Project).

Finding 1: Project Completion Not Submitted and Benefits/Outcomes were not reported to Caltrans.

Background:

As noted in the Report, RCTC did not submit the Completion Report to Caltrans within six months of the project opening to the public in April 2022 due to RCTC not receiving the Final Relief of Maintenance and Project Acceptance from Caltrans. The final Relief of Maintenance was received on August 7, 2023. RCTC believed that the completion report could not be entered into the California State Multi-Modal Accounting Reporting Tool (CalSMART) until the Final Relief of Maintenance was provided. RCTC was unable to access the page, as stated in the Report, and RCTC did not submit a request to the help desk as it was assumed that access would only be granted once Final Acceptance by Caltrans was approved. RCTC has clarified this issue and has access to submit the Completion report.

The approved project scope as noted in the project documents is as follows:

*"The project will widen the Railroad Canyon Road under the freeway to eight lanes with dual left turn lanes to the southbound on-ramp, reconstruct the northbound ramps to a hook configuration to Grape Street, eliminate the existing northbound exit ramp and Railroad Canyon Road, construct auxiliary and deceleration lanes on Interstate 15, and widen the Railroad Canyon southbound exit ramp."*

Caltrans provided project oversight and the project has been inspected by Caltrans and found to be built as per the plans and specifications. Therefore, the project has constructed the approved project scope and is in compliance with this goal.

The approved project benefits for the project:

*"The proposed Phase 1 Railroad Canyon Road interchange improvements will ensure that the Railroad Canyon Road interchange is able to handle the increase traffic volumes while maintaining an acceptable LOS D or better thru failure year 2032, at which time the need for Phase 2 of the project will be required. Phase 1 will improve operation, safety, and capacity; and enhance economic opportunities in the region."*

**Management Response:**

RCTC is in the process of obtaining the post construction traffic data and re-running the necessary traffic models to validate the benefit. It is anticipated this process will be completed early next year, at which time RCTC will update the completion report.

RCTC has implemented the necessary corrective actions to address the audit finding. The Completion Report will be submitted as soon as possible with the validated data to indicate compliance with the project benefit. Furthermore, as noted above RCTC has coordinated with SB 1 Program Coordinators in determining project benefits and outcomes along with pertinent staff reviewing program guidelines.

Sincerely,



**Anne Mayer**  
Executive Director  
Riverside County Transportation Commission



**Erik Galloway**  
Project Delivery Director  
Riverside County Transportation Commission



**Sergio Vidal**  
Chief Financial Officer  
Riverside County Transportation Commission



## California Department of Transportation

JDIVISION OF LOCAL ASSISTANCE  
 P.O. BOX 942874, MS-1 | SACRAMENTO, CA 94274-0001  
 (916) 653-8620 | FAX (916) 654-2409 TTY 711  
[www.dot.ca.gov/programs/local-assistance](http://www.dot.ca.gov/programs/local-assistance)



February 13, 2024

Anne Mayer  
 Executive Director  
 Riverside County Transportation Commission  
 4080 Lemon St.  
 Riverside, CA 92501

Dear Ms. Mayer:

This letter serves as the California Department of Transportation (Caltrans) Division of Local Assistance's (DLA) corrective action plan for the finding described in the Project Audit for the Riverside County Transportation Commission (RCTC), dated December 2023. RCTC is required to implement the corrective actions by the due date indicated below.

### **Finding 1: Project Completion Not Submitted and Benefits/Outcomes Were Not Reported to Caltrans**

For project 0818000047, RCTC did not submit a Completion Report and did not report benefits/outcomes to Caltrans within six months of the project opening to the public in April 2022.

### **Corrective Actions Required by DLA by July 31, 2024:**

1. RCTC must submit the Completion Report to the District 8 Program / Project Manager and describe if there were significant differences in project benefits and outcomes that were not and/or will not be met.
2. Develop or update grant management procedures that must include, but are not limited to:
  - a. Reviewing grant requirements
  - b. Using a project management tool or an email calendar program to ensure compliance with grant deadlines
  - c. Retaining all project documents for a minimum of three (3) years following the issuance of the final voucher reimbursement to RCTC
  - d. Report on benefits and outcomes if there is a significant variance from initially forecasted estimates

For an example of grant management procedures, RCTC may refer to the link below:

<https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/guide/cmrg-chapter-2-grant-management.pdf>

Daniel Burke will be in contact with RCTC to discuss the corrective actions in further detail. He may be reached at [daniel.burke@dot.ca.gov](mailto:daniel.burke@dot.ca.gov).

Sincerely,



DEE LAM  
Chief, Division of Local Assistance

- c: Erik Galloway, Project Delivery Director, Riverside County Transportation Commission
- KC Handren, Deputy Director, Administration and Financial Management, California Transportation Commission
- Catalino A. Pining III, Director, District 8, Caltrans
- Ray I. Desselle, Deputy Director, Division of Transportation Planning, District 8, Caltrans
- Awais A. Sheikh, Chief, Office of Program/Project Management, Division of Program/Project Management, District 8
- Alberto Vergel de Dios, District Local Assistance Engineer, Local Assistance Program, Division of Transportation Planning, District 8, Caltrans
- Tanzeeba Kishwar, Chief, Office of Guidance and Oversight, Division of Local Assistance, Caltrans
- Ben Shelton, Chief, Caltrans Internal Audits Office, Division of Risk and Strategic Management, Caltrans

# **AGENDA ITEM 6H**





| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |  |
|---|--|
| <b>DATE:</b>                                      | September 11, 2024   |
| <b>TO:</b>  | Riverside County Transportation Commission   |
| <b>FROM:</b>                                      | Audit Ad Hoc Committee<br>Jennifer Fuller, Financial Administration Manager<br>Sergio Vidal, Chief Financial Officer |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director   |
| <b>SUBJECT:</b>                                   | Fiscal Year 2022/23 Transportation Development Act and Measure A Audit Results                                       |

**AUDIT AD HOC COMMITTEE AND STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Receive and file the Transportation Development Act (TDA) and Measure A audit results report for Fiscal Year (FY) 2022/23.

**BACKGROUND INFORMATION:**

In May 2021, following a competitive procurement, the Commission awarded agreements for a three-year contract term with three one-year options to extend the agreements to four audit firms to perform financial and compliance audits and agreed-upon procedures (audits) for TDA claimants (Article 3 and Article 4), Measure A recipients for Local Streets and Roads (LSR) and Specialized Transit, and the Western Riverside County Regional Conservation Authority (RCA) Member Agencies related to the Multiple Species Habitat Conservation Plan (MSHCP) Local Development Mitigation Fee. The firms and the services provided are as follows:

| Audit Firm  | Geographic Region   | Audits Performed                                    |
|---|---|---|
| Eide Bailey LLP (Eide Bailey)                             | Western Riverside County  | TDA, Measure A LSR, MSCHP                           |
| Brown Armstrong Accountancy Corporation (Brown Armstrong) | Western Riverside County, Coachella Valley, County of Riverside | TDA, Measure A LSR, MSCHP                           |
| BCA Watson Rice LLP (BCAWR)                               | Western Riverside County  | Measure A LSR, Measure A Specialized Transit, MSCHP |
| Conrad LLP (Conrad)                                       | Western Riverside County, Coachella Valley, Palo Verde Valley   | TDA, Measure A LSR, MSCHP                           |

Each jurisdiction was assigned one audit firm for all audits required. Riverside Transit Agency (RTA) and SunLine Transit Agency (SunLine) have elected to hire their own auditors. While the contracts include RCA audits related to the MSHCP, this staff report only reports the results of the TDA and Measure A audits.

## **Overview of Audits**

Eide Bailly, Brown Armstrong, BCAWR, and Conrad, along with the other agencies’ auditors, completed the FY 2022/23 audits and issued the audit reports. The following is a summary of the 56 audits performed:

| Funding Type                                    | Type of Procedure              | Eide Bailly | Brown Armstrong | BCAWR | Conrad | Other Auditors | Total |
|---|--------------------------------|-------------|-----------------|-------|--------|----------------|-------|
| TDA Article 3 (bicycle and pedestrian projects) | Financial and compliance audit | 1           | 4               | 0     | 1      | 0              | 6     |
| TDA Article 4 (transit)                         | Financial and compliance audit | 4           | 0               | 0     | 1      | 2              | 7     |
| Measure A specialized transit                   | Agreed-upon procedures         | 0           | 0               | 14    | 0      | 0              | 14    |
| Measure A local streets and roads               | Agreed-upon procedures         | 4           | 13              | 2     | 10     | 0              | 29    |

Based on a review of the reports, the following items are highlights from the FY 2022/23 audit results.

### **TDA Article 3 (Bicycle and Pedestrian Projects)**

- One jurisdiction (County of Riverside) had expenditures in excess of appropriations.

### **TDA Article 4 (Transit)**

- Six agencies met minimum farebox recovery ratio requirements. One agency (city of Riverside) is exempt from the requirement due to AB 149 Section 99268.17.
- City of Banning’s auditor identified an internal control weakness over the financial reporting process as three audit adjustments were recommended to reclassify operating assistance grants, reclassify deferred items, and remove prepaid expense. The misstatements were corrected by the city. Additionally, the auditor noted two city-prepared journal entries lacking evidence of review and approval.
- City of Beaumont’s auditor identified an internal control weakness over the financial reporting process and closing as the city overallocated interest and recognized excess Local Transportation Fund revenues. The misstatements were corrected by the city.

### **Measure A Specialized Transit**

- Match requirements met by fourteen agencies.
- Five agencies (Boys & Girls Club of Menifee Valley, Care-A-Van, Forest Folk, Friends of Moreno Valley, and Operation SafeHouse) had excess revenues over expenses totaling \$37,038, of which \$1,053 is related to excess Measure A funds received by Forest Folk and Operation SafeHouse. The balance of \$35,985 relates to excess matching contributions that may be retained by the agencies.

- Three agencies (Exceed, Independent Living Partnership, and Riverside University Health System Medical Center) had an excess of expenses over revenues totaling \$97,721. Generally, the agencies are responsible to cover the excess of expenses; however, if there is a balance of Measure A funds allocated to an agency, the agency may submit a revised claim.

**Measure A Local Streets and Roads**

- Majority of the agencies met their maintenance of effort (MOE) requirement, including one jurisdiction (city of Desert Hot Springs) who met their MOE requirement using the prior year carryover, as permitted under the MOE Guidelines. Three agencies (city of Jurupa Valley, city of Wildomar, and County of Riverside) are not subject to MOE requirements.
- Six jurisdictions (cities of Canyon Lake, Corona, Murrieta, Palm Desert, Perris, and Riverside) had fund balances in excess of three years of revenues. While the Commission policy suggests such amounts should not exceed three years, the jurisdictions provided reasonable explanations for the amounts, including project delays and capital improvement plans to expend those funds on projects in the next five years.
- Six agencies (cities of Banning, Lake Elsinore, Moreno Valley, Norco, San Jacinto, and Indian Wells) had cash and investments and fund balance amount variances exceeding 25 percent. The jurisdictions provided reasonable explanations for the variances, including timing differences for accounts receivable and payable in FY 2024/25.

Attached is the summary of transportation and transit fund operations and related audit results for the various types of TDA (Articles 3 and 4) and Measure A (specialized transit and local streets and roads) funding audits. Each schedule provides information for each claimant and recipient regarding the revenues, expenditures/expenses, and change in fund balance/net position for the year ended June 30, 2023, and other financial and compliance information.

**FISCAL IMPACT:**

This item is for informational purposes only. There is no fiscal impact.

Attachments:

- 1) FY 2022/23 Transportation Development Act Article 3 Schedule
- 2) FY 2022/23 Transportation Development Act Article 4 Schedule
- 3) FY 2022/23 Measure A Specialized Transit Schedule
- 4) FY 2022/23 Measure A Local Streets and Roads Schedule



**Transportation Development Act Article 3 Schedule  
Year Ended June 30, 2023**

|                                    | Eastvale   | La Quinta | Moreno<br>Valley | Riverside | Wildomar   | County of<br>Riverside | Total        |
|------------------------------------|------------|-----------|------------------|-----------|------------|------------------------|--------------|
| Revenues:                          |            |           |                  |           |            |                        |              |
| Intergovernmental allocations:     |            |           |                  |           |            |                        |              |
| Article 3                          | \$ 144,110 | \$ 60,607 | \$ 342,619       | \$ -      | \$ 275,000 | \$ 944,667             | \$ 1,767,003 |
| Interest income (loss)             | -          | -         | -                | (3)       | 4          | -                      | 1            |
| Total revenues                     | 144,110    | 60,607    | 342,619          | (3)       | 275,004    | 944,667                | 1,767,004    |
| <br>                               |            |           |                  |           |            |                        |              |
| Total expenditures                 | 41,792     | 37,692    | 323,229          | 104       | 275,004    | 944,667                | 1,622,488    |
| <br>                               |            |           |                  |           |            |                        |              |
| Net changes in fund balance        | 102,318    | 22,915    | 19,390           | (107)     | -          | -                      | 144,516      |
| <br>                               |            |           |                  |           |            |                        |              |
| Fund balances at beginning of year | (102,318)  | (22,915)  | (13,385)         | 210       | -          | -                      | (138,408)    |
| Fund balances at end of year       | \$ -       | \$ -      | \$ 6,005         | \$ 103    | \$ -       | \$ -                   | \$ 6,108     |

Source: 2023 Financial Statements



**Transportation Development Act Article 4 Schedule  
Year Ended June 30, 2023**

|   | Banning        | Beaumont     | Corona      | Riverside  | PVVTA        | RTA <sup>1</sup> | SunLine <sup>1</sup> | Total          |
|---|----------------|--------------|-------------|--|--------------|------------------|----------------------|----------------|
| Total operating revenues                      | \$ 52,344      | \$ 91,077    | \$ 84,180   | \$ 257,631   | \$215,321    | \$ 6,316,413     | \$ 5,199,647         | \$ 12,216,613  |
| Operating expenses:                           |                |              |             |  |              |                  |                      |                |
| Depreciation and amortization                 | 82,411         | 548,418      | 653,355     | 282,589  | 269,050      | 21,819,019       | 9,397,943            | 33,052,785     |
| Other operating expenses                      | 2,209,708      | 2,315,916    | 2,685,728   | 4,450,267  | 1,715,058    | 92,394,567       | 44,027,036           | 149,798,280    |
| Total operating expenses                      | 2,292,119      | 2,864,334    | 3,339,083   | 4,732,856  | 1,984,108    | 114,213,586      | 53,424,979           | 182,851,065    |
| Operating loss                                | (2,239,775)    | (2,773,257)  | (3,254,903) | (4,475,225)  | (1,768,787)  | (107,897,173)    | (48,225,332)         | (170,634,452)  |
| Nonoperating revenues (expenses):             |                |              |             |  |              |                  |                      |                |
| Grants:                                       |                |              |             |  |              |                  |                      |                |
| Local Transportation Funds                    | 1,837,760      | 1,930,365    | 1,189,220   | 4,148,020  | 715,850      | 39,603,018       | 21,954,362           | 71,378,595     |
| State Transit Assistance/State of Good Repair | 68,425         | 69,571       | 17,150      | -  | -            | -                | -                    | 155,146        |
| Federal                                       | -              | -            | 1,141,992   | -  | 464,682      | 34,439,620       | 8,494,152            | 44,540,446     |
| Measure A specialized transit                 | -              | 160,667      | -           | -  | -            | 4,000,000        | 10,900,000           | 15,060,667     |
| Proposition 1B/Low Carbon Transit             |                |              |             |  |              |                  |                      |                |
| Operations Program (LCTOP)                    | 36,981         | 38,961       | 205,600     | -  | 62,443       | 4,023,842        | 282,410              | 4,650,237      |
| Other   | -              | -            | 10,000      | -  | 20,000       | 656,549          | 25,324               | 711,873        |
| Interest income                               | 9,758          | 25,741       | 14,314      | 18,234   | 23           | 2,298,164        | 12,715               | 2,378,949      |
| Interest expense                              | -              | -            | -           | (72,164)   | -            | -                | -                    | (72,164)       |
| Gain (loss) on sale of property               | 11,091         | -            | -           | -  | -            | 61,687           | -                    | 72,778         |
| Other   | 5,390          | 8,039        | (17,845)    | (958)  | -            | 1,474,119        | 7,459                | 1,476,204      |
| Total nonoperating revenue (expense)          | 1,969,405      | 2,233,344    | 2,560,431   | 4,093,132  | 1,262,998    | 86,556,999       | 41,676,422           | 140,352,731    |
| Net increase (decrease)                       | (270,370)      | (539,913)    | (694,472)   | (382,093)  | (505,789)    | (21,340,174)     | (6,548,910)          | (30,281,721)   |
| Capital Contributions                         | 97,177         | 580,033      | -           | 99,503   | 8,608        | 29,631,832       | 7,998,496            | 38,415,649     |
| Transfer in from other City funds             | 112,004        | 34,840       | -           | -  | -            | -                | -                    | 146,844        |
| Transfer out from other City Funds            | (3,584)        | -            | -           | -  | -            | -                | -                    | (3,584)        |
| Net positions at beginning of year            | (1,057,035)    | 2,652,918    | 1,535,566   | (1,148,782)  | 2,348,049    | 99,255,881       | 94,413,204           | 197,999,801    |
| Net positions at end of year                  | \$ (1,121,808) | \$ 2,727,878 | \$ 841,094  | \$ (1,431,372)   | \$ 1,850,868 | \$ 107,547,539   | \$ 95,862,790        | \$ 206,276,989 |
| Unearned revenue at end of year:              |                |              |             |  |              |                  |                      |                |
| Operating                                     | \$ (127,157)   | \$ 491,435   | \$ 373,690  | \$ 649,306   | \$ (196,288) | \$ 10,471,759    | \$ 2,276,607         | \$ 13,939,352  |
| Capital                                       | -              | -            | -           | -  | (31,642)     | 59,833,688       | 4,671,148            | 64,473,194     |
| Total unearned revenue at end of year         | \$ (127,157)   | \$ 491,435   | \$ 373,690  | \$ 649,306   | \$ (227,930) | \$ 70,305,447    | \$ 6,947,755         | \$ 78,412,546  |
| Minimum fare ratio                            | 10.00%         | 10.00%       | 15.00%      | 10.00%   | 10.00%       | 17.34%           | 18.73%               |                |
| Actual fare ratio                             | 11.00%         | 18.61%       | 20.00%      |  | 13.72%       | 30.42%           | 33.12%               |                |
| Fare ratio compliance status                  | Met            | Met          | Met         | No Longer<br>Required per<br>AB149 Section<br>99268.17 | Met          | Met              | Met                  |                |

Source: 2023 Financial Statements

<sup>1</sup> The audits for RTA and SunLine were completed by other auditors hired by each entity.





**Measure A Specialized Transit Schedule  
Year Ended June 30, 2023**

|   | Boys & Girls<br>Club of<br>Menifee Valley | Boys & Girls<br>Club of<br>Southwest<br>County | Care-A-Van      | Care<br>Connexus | Riverside<br>University<br>Health<br>System-<br>Behavioral<br>Health | Exceed     | Forest Folk | Friends of<br>Moreno<br>Valley | Independent<br>Living<br>Partnership | City of<br>Norco | Operation<br>SafeHouse | Riverside<br>University<br>Health System<br>Medical Center | U.S.<br>Veterans<br>Initiative | Voices for<br>Children | Total        |
|---|---|--|-----------------|------------------|--|------------|-------------|--------------------------------|--------------------------------------|------------------|------------------------|--|--------------------------------|------------------------|--------------|
| Operating revenues:                                   |   |  |                 |                  |  |            |             |                                |                                      |                  |                        |  |                                |                        |              |
| Measure A   | \$ 106,732                                | \$ 93,891                                      | \$ 297,543      | \$ 151,242       | \$ 330,670   | \$ 106,319 | \$ 56,992   | \$ 111,002                     | \$ 367,378                           | \$ 91,755        | \$ 37,780              | \$ 496,083   | \$ 51,099                      | \$ 121,587             | \$ 2,420,073 |
| In-kind match   |   |  | 47,525          |                  |  |            | 29,546      | 34,929                         | 726,124                              |                  |                        |  |                                | 253,721                | 1,091,845    |
| Cash match  | 55,071                                    | 48,368   | 96,478          | 46,175           | 170,346  | 178,836    | 2,757       | 99,244                         | 190,967                              | 47,268           | 19,460                 | 341,820  | 38,334                         |                        | 1,335,124    |
| Total operating revenues                              | 161,803                                   | 142,259  | 441,546         | 197,417          | 501,016  | 285,155    | 89,295      | 245,175                        | 1,284,469                            | 139,023          | 57,240                 | 837,903  | 89,433                         | 375,308                | 4,847,042    |
| Operating expenses-in kind                            | -   | -  | 47,525          | -                | -  | -          | 29,546      | 34,929                         | 726,124                              | -                | -                      | -  | -                              | 253,721                | 1,091,845    |
| Operating expenses-salaries & benefits                | 48,344                                    | 98,574   | 254,605         | 99,174           | 376,342  | 181,256    | 20,876      | -                              | 186,986                              | 88,566           | 34,084                 | 670,461  | 75,250                         | 56,800                 | 2,191,318    |
| Operating expenses-nonpersonnel                       | 113,430                                   | 33,147   | 132,729         | 83,620           | 98,196   | 89,155     | 37,823      | 180,977                        | 354,998                              | 43,562           | 18,913                 | 87,808   | 8,448                          | 64,787                 | 1,347,593    |
| Operating expenses-administrative overhead            | -   | 10,538   | -               | 14,623           | 26,478   | 15,472     | -           | -                              | 17,686                               | 6,895            | 4,240                  | 24,790   | 5,735                          | -                      | 126,457      |
| Capital expenses                                      | -   | -  | -               | -                | -  | -          | -           | -                              | -                                    | -                | -                      | 150,512  | -                              | -                      | 150,512      |
| Total operating expenses/capital expenses             | 161,774                                   | 142,259  | 434,859         | 197,417          | 501,016  | 285,883    | 88,245      | 215,906                        | 1,285,794                            | 139,023          | 57,237                 | 933,571  | 89,433                         | 375,308                | 4,907,725    |
| Excess (deficiency) of revenues over (under) expenses | \$ 29                                     | \$ -   | \$ 6,687        | \$ -             | \$ -   | \$ (728)   | \$ 1,050    | \$ 29,269                      | \$ (1,325)                           | \$ -             | \$ 3                   | \$ (95,668)  | \$ -                           | \$ -                   | \$ (60,683)  |
| Excess revenues related to Measure A                  | \$ -                                      | \$ -   | \$ -            | \$ -             | \$ -   | \$ -       | \$ 1,050    | \$ -                           | \$ -                                 | \$ -             | \$ 3                   | \$ -   | \$ -                           | \$ -                   | \$ 1,053     |
| Match requirement (as adjusted)                       | \$ 55,003                                 | \$ 48,368                                      | \$ -            | \$ -             | \$ 170,346   | \$ 140,000 | \$ 32,303   | \$ 134,055                     | \$ 189,255                           | \$ 43,975        | \$ 19,460              | \$ 341,496   | \$ 38,334                      | \$ 240,000             | \$ 1,452,595 |
| Actual match  | \$ 55,071                                 | \$ 48,368                                      | \$ 144,003      | \$ 46,175        | \$ 170,346   | \$ 178,836 | \$ 32,303   | \$ 134,173                     | \$ 917,091                           | \$ 47,268        | \$ 19,460              | \$ 341,820   | \$ 38,334                      | \$ 253,721             | \$ 2,426,969 |
| Match requirement compliance status                   | Met as adjusted                           | Met as adjusted                                | Met as adjusted | Met as adjusted  | Met as adjusted  | Met        | Met         | Met                            | Met as adjusted                      | Met              | Met                    | Met as adjusted  | Met                            | Met                    |              |

Source: 2023 Agreed-Upon Procedures



**Measure A Local Streets and Roads Schedule**  
**Year ended June 30, 2023**

| <b>Western County</b>  |                     |                     |                   |                     |                      |                     |                     |                     |                     |                     |                      |
|--|---------------------|---------------------|-------------------|---------------------|----------------------|---------------------|---------------------|---------------------|---------------------|---------------------|----------------------|
|  | Banning             | Beaumont            | Calimesa          | Canyon Lake         | Corona               | Eastvale            | Hemet               | Jurupa Valley       | Lake Elsinore       | Menifee             | Moreno Valley        |
| <b>Revenues:</b>   |                     |                     |                   |                     |                      |                     |                     |                     |                     |                     |                      |
| Intergovernmental allocations:   |                     |                     |                   |                     |                      |                     |                     |                     |                     |                     |                      |
| Measure A  | \$ 914,578          | \$ 901,847          | \$ 323,492        | \$ 294,400          | \$ 5,794,120         | \$ 3,417,628        | \$ 2,901,824        | \$ 3,463,400        | \$ 2,378,785        | \$ 3,119,910        | \$ 6,639,058         |
| Reimbursements   | -                   | -                   | -                 | -                   | -                    | -                   | -                   | -                   | -                   | -                   | -                    |
| Other revenues   | 271,204             | -                   | -                 | -                   | 35,068               | -                   | -                   | -                   | -                   | 2,500               | -                    |
| Interest income  | 3,835               | 69,464              | 17,144            | 5,149               | 304,155              | 206,884             | 90,622              | 88,342              | 18,906              | 15,597              | 149,204              |
| Other financing sources-transfers in   | -                   | -                   | -                 | -                   | -                    | 7,735               | -                   | -                   | -                   | -                   | -                    |
| <b>Total revenues</b>  | <b>1,189,617</b>    | <b>971,311</b>      | <b>340,636</b>    | <b>299,549</b>      | <b>6,133,343</b>     | <b>3,632,247</b>    | <b>2,992,446</b>    | <b>3,551,742</b>    | <b>2,397,691</b>    | <b>3,138,007</b>    | <b>6,788,262</b>     |
| <b>Expenditures and other financing uses:</b>                                      |                     |                     |                   |                     |                      |                     |                     |                     |                     |                     |                      |
| Engineering, construction, maintenance, and capital outlay                         | 428,790             | -                   | 312,673           | -                   | 7,126,785            | 1,493,956           | 4,685,637           | 1,167,505           | -                   | 319,794             | 5,853,580            |
| Administrative overhead/indirect costs   | 41,924              | -                   | 21,920            | -                   | 168,000              | -                   | -                   | -                   | -                   | -                   | 16,372               |
| Capital outlay   | -                   | -                   | -                 | -                   | -                    | 25,134              | -                   | -                   | -                   | -                   | -                    |
| Debt service   |                     |                     |                   |                     |                      |                     |                     |                     |                     |                     |                      |
| Principal  | -                   | -                   | -                 | -                   | -                    | -                   | -                   | 855,000             | -                   | -                   | -                    |
| Interest   | -                   | -                   | -                 | -                   | -                    | -                   | -                   | 205,000             | -                   | -                   | -                    |
| Transfers out  | -                   | 30,452              | -                 | -                   | -                    | 124,725             | -                   | 58,168              | 2,909,097           | 1,076,754           | 1,463,800            |
| <b>Total expenditures and other financing uses</b>                                 | <b>470,714</b>      | <b>30,452</b>       | <b>334,593</b>    | <b>-</b>            | <b>7,294,785</b>     | <b>1,643,815</b>    | <b>4,685,637</b>    | <b>2,285,673</b>    | <b>2,909,097</b>    | <b>1,396,548</b>    | <b>7,333,752</b>     |
| Excess (deficiency) of revenues over (under) expenditures and other financing uses | 718,903             | 940,859             | 6,043             | 299,549             | (1,161,442)          | 1,988,432           | (1,693,191)         | 1,266,069           | (511,406)           | 1,741,459           | (545,490)            |
| Prior period adjustment/rounding   | -                   | -                   | -                 | -                   | -                    | -                   | -                   | 2                   | (1)                 | (4)                 | -                    |
| Fund balances at beginning of year   | 613,836             | 1,955,121           | 715,038           | 1,138,884           | 18,948,312           | 4,648,625           | 6,427,557           | 4,337,091           | 1,564,590           | 2,600,646           | 9,090,712            |
| <b>Fund balances at end of year</b>  | <b>\$ 1,332,739</b> | <b>\$ 2,895,980</b> | <b>\$ 721,081</b> | <b>\$ 1,438,433</b> | <b>\$ 17,786,870</b> | <b>\$ 6,637,057</b> | <b>\$ 4,734,366</b> | <b>\$ 5,603,162</b> | <b>\$ 1,053,183</b> | <b>\$ 4,342,101</b> | <b>\$ 8,545,222</b>  |
| <b>Fund balance by year received:</b>  |                     |                     |                   |                     |                      |                     |                     |                     |                     |                     |                      |
| 2023   | \$ 1,189,617        | \$ 971,311          | \$ 340,636        | \$ 299,549          | \$ 6,133,343         | \$ 3,632,247        | \$ 2,992,446        | \$ 3,551,742        | \$ 1,053,183        | \$ 3,138,007        | \$ 6,788,262         |
| 2022   | 143,122             | 1,525,247           | 302,709           | 272,651             | 5,130,215            | 2,118,262           | 1,741,920           | 2,051,420           | -                   | 1,204,094           | 1,756,960            |
| 2021   | -                   | 399,422             | 77,736            | 286,579             | 5,559,413            | 886,548             | -                   | -                   | -                   | -                   | -                    |
| 2020 & Prior   | -                   | -                   | -                 | 579,654             | 963,899              | -                   | -                   | -                   | -                   | -                   | -                    |
| <b>Total fund balances by year received</b>  | <b>\$ 1,332,739</b> | <b>\$ 2,895,980</b> | <b>\$ 721,081</b> | <b>\$ 1,438,433</b> | <b>\$ 17,786,870</b> | <b>\$ 6,637,057</b> | <b>\$ 4,734,366</b> | <b>\$ 5,603,162</b> | <b>\$ 1,053,183</b> | <b>\$ 4,342,101</b> | <b>\$ 8,545,222</b>  |
| <b>Cash and investments</b>  | <b>\$ 775,577</b>   | <b>\$ 2,761,618</b> | <b>\$ 664,239</b> | <b>\$ 1,386,702</b> | <b>\$ 17,111,119</b> | <b>\$ 6,315,575</b> | <b>\$ 4,559,758</b> | <b>\$ 5,049,068</b> | <b>\$ 627,018</b>   | <b>\$ 3,888,262</b> | <b>\$ 11,120,732</b> |
| MOE Base Year requirement  | \$ 164,325          | \$ 515,908          | \$ 2,401          | \$ 28,873           | \$ 2,208,200         | \$ 38,949           | \$ 18,924           | \$ -                | \$ 960,771          | \$ 214,225          | \$ 1,459,153         |
| Amount of Excess MOE at end of year  | \$ 1,648,326        | \$ 5,545,968        | \$ 510,941        | \$ 234,155          | \$ 23,744,318        | \$ 643,241          | \$ 763,733          | \$ -                | \$ 39,125,934       | \$ 12,777,470       | \$ 12,624,493        |
| MOE compliance status  | Met                 | Met                 | Met               | Met                 | Met                  | Met                 | Met                 | N/A                 | Met                 | Met                 | Met                  |

Source: 2023 Agreed-Upon Procedures

**Measure A Local Streets and Roads Schedule**  
**Year ended June 30, 2023**

|  | Murrieta             | Norco             | Perris               | Riverside            | San Jacinto         | Temecula            | Wildomar            | Total                 |
|--|----------------------|-------------------|----------------------|----------------------|---------------------|---------------------|---------------------|-----------------------|
| <b>Revenues:</b>   |                      |                   |                      |                      |                     |                     |                     |                       |
| Intergovernmental allocations:   |                      |                   |                      |                      |                     |                     |                     |                       |
| Measure A  | \$ 3,419,266         | \$ 1,002,380      | \$ 2,704,207         | \$ 11,110,303        | \$ 1,389,033        | \$ 4,503,516        | \$ 1,026,180        | \$ 55,303,927         |
| Reimbursements   | -                    | -                 | -                    | -                    | -                   | -                   | -                   | -                     |
| Other revenues   | 316,088              | -                 | -                    | 30,326               | -                   | -                   | 6,730               | 661,916               |
| Interest income  | 229,473              | 18,010            | 77,511               | 226,757              | 18,718              | 166,036             | 1,269               | 1,707,076             |
| Other financing sources-transfers in   | -                    | -                 | -                    | 693,555              | -                   | -                   | -                   | 701,290               |
| <b>Total revenues</b>  | <b>3,964,827</b>     | <b>1,020,390</b>  | <b>2,781,718</b>     | <b>12,060,941</b>    | <b>1,407,751</b>    | <b>4,669,552</b>    | <b>1,034,179</b>    | <b>58,374,209</b>     |
| <b>Expenditures and other financing uses:</b>                                      |                      |                   |                      |                      |                     |                     |                     |                       |
| Engineering, construction, maintenance, and capital outlay                         | 882,331              | 1,134,229         | 2,348,551            | -                    | -                   | 2,729,189           | 665,282             | 29,148,302            |
| Administrative overhead/indirect costs   | -                    | -                 | -                    | -                    | 62,000              | -                   | -                   | 310,216               |
| Capital outlay   | -                    | -                 | -                    | 2,664,473            | -                   | -                   | -                   | 2,689,607             |
| Debt service   |                      |                   |                      |                      |                     |                     |                     |                       |
| Principal  | -                    | -                 | -                    | -                    | -                   | -                   | -                   | 855,000               |
| Interest   | -                    | -                 | -                    | -                    | -                   | -                   | -                   | 205,000               |
| Transfers out  | 730,600              | -                 | -                    | 2,998,740            | 340,218             | 3,907,518           | 56,800              | 13,696,872            |
| <b>Total expenditures and other financing uses</b>                                 | <b>1,612,931</b>     | <b>1,134,229</b>  | <b>2,348,551</b>     | <b>5,663,213</b>     | <b>402,218</b>      | <b>6,636,707</b>    | <b>722,082</b>      | <b>46,904,997</b>     |
| Excess (deficiency) of revenues over (under) expenditures and other financing uses | 2,351,896            | (113,839)         | 433,167              | 6,397,728            | 1,005,533           | (1,967,155)         | 312,097             | 11,469,212            |
| Prior period adjustment/rounding   | 1                    | 1                 | 167,177              | -                    | -                   | -                   | (1)                 | 167,175               |
| Fund balances at beginning of year   | 8,882,671            | 604,211           | 10,836,889           | 28,505,814           | 1,378,055           | 9,063,243           | 848,128             | 112,159,423           |
| <b>Fund balances at end of year</b>  | <b>\$ 11,234,568</b> | <b>\$ 490,373</b> | <b>\$ 11,437,233</b> | <b>\$ 34,903,542</b> | <b>\$ 2,383,588</b> | <b>\$ 7,096,088</b> | <b>\$ 1,160,224</b> | <b>\$ 123,795,810</b> |
| <b>Fund balance by year received:</b>  |                      |                   |                      |                      |                     |                     |                     |                       |
| 2023   | \$ 3,964,827         | \$ 490,373        | \$ 2,781,718         | \$ 12,060,941        | \$ 1,407,751        | \$ 4,669,552        | \$ 1,034,179        | \$ 56,499,684         |
| 2022   | 3,591,689            | -                 | 2,789,938            | 10,908,552           | 975,837             | 2,426,536           | 126,045             | 37,065,197            |
| 2021   | 3,303,927            | -                 | 2,729,639            | 9,597,530            | -                   | -                   | -                   | 22,840,794            |
| 2020 & Prior   | 374,125              | -                 | 3,135,938            | 2,336,519            | -                   | -                   | -                   | 7,390,135             |
| <b>Total fund balances by year received</b>  | <b>\$ 11,234,568</b> | <b>\$ 490,373</b> | <b>\$ 11,437,233</b> | <b>\$ 34,903,542</b> | <b>\$ 2,383,588</b> | <b>\$ 7,096,088</b> | <b>\$ 1,160,224</b> | <b>\$ 123,795,810</b> |
| <b>Cash and investments</b>  | <b>\$ 11,034,469</b> | <b>\$ 841,619</b> | <b>\$ 12,962,587</b> | <b>\$ 32,927,695</b> | <b>\$ 1,093,647</b> | <b>\$ 6,685,622</b> | <b>\$ 1,070,281</b> | <b>\$ 120,875,588</b> |
| MOE Base Year requirement  | \$ 595,702           | \$ 22,536         | \$ 1,218,470         | \$ 12,449,203        | \$ 156,391          | \$ 1,431,799        | \$ -                | \$ 21,485,830         |
| Amount of Excess MOE at end of year  | \$ 1,160,037         | \$ 156,436        | \$ 7,706,114         | \$ 71,956,553        | \$ 4,685,751        | \$ 20,425,660       | \$ -                | \$ 203,709,130        |
| MOE compliance status  | Met                  | Met               | Met                  | Met                  | Met                 | Met                 | N/A                 |                       |

Source: 2023 Agreed-Upon Procedures

**Measure A Local Streets and Roads Schedule**  
**Year ended June 30, 2023**

|  | Coachella Valley    |                     |                    |                  |                     |                     |                      |                     |                     | Palo Verde Valley    | County of Riverside | Total                |                       |
|--|---------------------|---------------------|--------------------|------------------|---------------------|---------------------|----------------------|---------------------|---------------------|----------------------|---------------------|----------------------|-----------------------|
|  | Cathedral City      | Coachella           | Desert Hot Springs | Indian Wells     | Indio               | La Quinta           | Palm Desert          | Palm Springs        | Rancho Mirage       | Total                |                     |                      | Blythe                |
| <b>Revenues:</b>   |                     |                     |                    |                  |                     |                     |                      |                     |                     |                      |                     |                      |                       |
| Intergovernmental allocations:   |                     |                     |                    |                  |                     |                     |                      |                     |                     |                      |                     |                      |                       |
| Measure A  | \$ 2,101,271        | \$ 827,136          | \$ 790,228         | \$ 296,540       | \$ 2,652,397        | \$ 2,036,267        | \$ 3,562,513         | \$ 3,274,168        | \$ 1,101,954        | \$ 16,642,474        | \$ 956,362          | \$ 12,937,566        | \$ 85,840,329         |
| Reimbursements   | -                   | -                   | -                  | -                | -                   | -                   | 97,960               | -                   | -                   | 97,960               | -                   | -                    | 97,960                |
| Other revenues   | 23,991              | 15,295              | -                  | -                | -                   | -                   | -                    | 724,323             | -                   | 763,609              | -                   | -                    | 1,425,525             |
| Interest income  | 17,183              | 12,587              | 3,432              | (30)             | (4,858)             | 65,996              | 738,083              | 80,504              | (22,376)            | 890,521              | 17,212              | 97,301               | 2,712,110             |
| Other financing sources-transfers in   | 64,684              | -                   | -                  | -                | 666,407             | -                   | -                    | -                   | -                   | 731,091              | -                   | -                    | 1,432,381             |
| <b>Total revenues</b>  | <b>2,207,129</b>    | <b>855,018</b>      | <b>793,660</b>     | <b>296,510</b>   | <b>3,313,946</b>    | <b>2,102,263</b>    | <b>4,398,556</b>     | <b>4,078,995</b>    | <b>1,079,578</b>    | <b>19,125,655</b>    | <b>973,574</b>      | <b>13,034,867</b>    | <b>\$ 91,508,305</b>  |
| <b>Expenditures and other financing uses:</b>                                      |                     |                     |                    |                  |                     |                     |                      |                     |                     |                      |                     |                      |                       |
| Engineering, construction, maintenance, and capital outlay                         | 1,524,642           | -                   | 438,690            | -                | 2,729,625           | 33,703              | 4,618,621            | 2,309,832           | -                   | 11,655,113           | 96,248              | 1,878,605            | 42,778,268            |
| Administrative overhead/indirect costs   | -                   | -                   | 34,930             | 300,000          | -                   | -                   | -                    | -                   | -                   | 334,930              | 70,405              | -                    | 715,551               |
| Capital outlay   | -                   | -                   | -                  | -                | -                   | -                   | -                    | -                   | 501,766             | 501,766              | -                   | -                    | 3,191,373             |
| Debt service   |                     |                     |                    |                  |                     |                     |                      |                     |                     |                      |                     |                      |                       |
| Principal  | -                   | -                   | -                  | -                | -                   | -                   | -                    | -                   | -                   | -                    | -                   | -                    | 855,000               |
| Interest   | -                   | -                   | -                  | -                | -                   | -                   | -                    | -                   | -                   | -                    | -                   | -                    | 205,000               |
| Transfers out  | 137,743             | 763,208             | 161,084            | -                | 80,928              | 2,694,735           | -                    | -                   | -                   | 3,837,698            | 13,063              | -                    | 17,547,633            |
| <b>Total expenditures and other financing uses</b>                                 | <b>1,662,385</b>    | <b>763,208</b>      | <b>634,704</b>     | <b>300,000</b>   | <b>2,810,553</b>    | <b>2,728,438</b>    | <b>4,618,621</b>     | <b>2,309,832</b>    | <b>501,766</b>      | <b>16,329,507</b>    | <b>179,716</b>      | <b>1,878,605</b>     | <b>65,292,825</b>     |
| Excess (deficiency) of revenues over (under) expenditures and other financing uses | 544,744             | 91,810              | 158,956            | (3,490)          | 503,393             | (626,175)           | (220,065)            | 1,769,163           | 577,812             | 2,796,148            | 793,858             | 11,156,262           | 26,215,480            |
| Prior period adjustment/rounding   | -                   | -                   | (55,785)           | -                | 1,612               | -                   | 20,000               | (330,035)           | -                   | (364,208)            | (54,488)            | -                    | (251,521)             |
| Fund balances at beginning of year   | 1,597,564           | 917,615             | 639,844            | 70,533           | 3,800,182           | 4,740,268           | 21,798,450           | 8,331,834           | 1,681,293           | 43,577,583           | 1,055,974           | 5,557,957            | 162,350,937           |
| <b>Fund balances at end of year</b>  | <b>\$ 2,142,308</b> | <b>\$ 1,009,425</b> | <b>\$ 743,015</b>  | <b>\$ 67,043</b> | <b>\$ 4,305,187</b> | <b>\$ 4,114,093</b> | <b>\$ 21,598,385</b> | <b>\$ 9,770,962</b> | <b>\$ 2,259,105</b> | <b>\$ 46,009,523</b> | <b>\$ 1,795,344</b> | <b>\$ 16,714,219</b> | <b>\$ 188,314,896</b> |
| <b>Fund balance by year received:</b>  |                     |                     |                    |                  |                     |                     |                      |                     |                     |                      |                     |                      |                       |
| 2023   | \$ 2,142,308        | \$ 855,018          | \$ 743,015         | \$ 67,043        | \$ 3,313,946        | \$ 2,102,263        | \$ 4,398,556         | \$ 4,078,995        | \$ 1,079,578        | \$ 18,780,722        | \$ 973,574          | 13,034,867           | 89,288,847            |
| 2022   | -                   | 154,407             | -                  | -                | 991,241             | 1,982,372           | 3,744,760            | 5,691,967           | 1,058,115           | 13,622,862           | 821,770             | 3,679,352            | 55,189,181            |
| 2021   | -                   | -                   | -                  | -                | -                   | 29,458              | 6,477,122            | -                   | 121,412             | 6,627,992            | -                   | -                    | 29,468,786            |
| 2020 & Prior   | -                   | -                   | -                  | -                | -                   | -                   | 6,977,947            | -                   | -                   | 6,977,947            | -                   | -                    | 14,368,082            |
| <b>Total fund balances by year received</b>  | <b>\$ 2,142,308</b> | <b>\$ 1,009,425</b> | <b>\$ 743,015</b>  | <b>\$ 67,043</b> | <b>\$ 4,305,187</b> | <b>\$ 4,114,093</b> | <b>\$ 21,598,385</b> | <b>\$ 9,770,962</b> | <b>\$ 2,259,105</b> | <b>\$ 46,009,523</b> | <b>\$ 1,795,344</b> | <b>\$ 16,714,219</b> | <b>\$ 188,314,896</b> |
| <b>Cash and investments</b>  | <b>\$ 1,783,248</b> | <b>\$ 941,228</b>   | <b>\$ 686,514</b>  | <b>\$ 14,917</b> | <b>\$ 4,368,181</b> | <b>\$ 3,753,241</b> | <b>\$ 21,719,622</b> | <b>\$ 9,091,912</b> | <b>\$ 2,363,295</b> | <b>\$ 44,722,158</b> | <b>\$ 1,651,614</b> | <b>\$ 16,575,410</b> | <b>\$ 183,824,770</b> |
| MOE Base Year requirement  | \$ 391,688          | \$ 92,205           | \$ 75,147          | \$ 963,640       | \$ 2,048,564        | \$ 937,007          | \$ 2,398,146         | \$ 1,498,732        | \$ 674,811          | \$ 9,079,940         | \$ 170,000          | \$ -                 | \$ 30,735,770         |
| Amount of Excess MOE at end of year  | \$ 13,142,126       | \$ 11,939,689       | \$ 973,170         | \$ 15,567,565    | \$ 32,372,784       | \$ 13,802,106       | \$ 18,157,121        | \$ 49,903,383       | \$ 5,895,395        | \$ 161,753,339       | \$ 1,578,895        | \$ -                 | \$ 367,041,364        |
| MOE compliance status  | Met                 | Met                 | Used PY            | Met              | Met                 | Met                 | Met                  | Met                 | Met                 | Met                  | Met                 | N/A                  |                       |

Source: 2023 Agreed-Upon Procedures



# **AGENDA ITEM 6I**





| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |   |
|---|---|
| <b>DATE:</b>                                      | September 11, 2024  |
| <b>TO:</b>  | Riverside County Transportation Commission                      |
| <b>FROM:</b>                                      | Audit Ad Hoc Committee<br>Sergio Vidal, Chief Financial Officer |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director                                  |
| <b>SUBJECT:</b>                                   | Audit Plan for the Commission’s Fiscal Year 2023/24 Audit       |

**AUDIT AD HOC COMMITTEE AND STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Receive and file the audit plan related to the upcoming audit of the Commission’s Fiscal Year 2023/24 financial statements and ensure communication between auditor and those in charge with governance (Audit Ad Hoc Committee) of the Commission.

**BACKGROUND INFORMATION:**

As required by Auditing standards, *The Auditor’s Communication with Those Charged With Governance* (AU-C260), the Commission’s independent financial auditor is required to make certain annual communications to the Commission’s Audit Ad Hoc Committee, or its equivalent, in connection with the upcoming annual audit of the Commission’s financial statements.

At the conclusion of a competitive process, the Commission approved an agreement with Eide Bailly LLP (Eide Bailly or Auditor) in March 2020 for audit services for an initial three-year term, and three one-year options to extend the agreement. Specifically, Eide Bailly is engaged to conduct the following audits and related engagements:

**Audits**

- Annual Comprehensive Financial Report (ACFR)
- Local Transportation Fund (LTF)
- State Transit Assistance Fund (STA)
- State of Good Repair (SGR)
- Prop 1B
- Low Carbon Transit Operations Program (LCTOP)
- SR-91 Express Lanes
- I-15 Express Lanes
- Federal Grant Programs (“Single Audit”)

*Other Services:*

- Procedures related to Compliance with Covenants and Provisions of the Reimbursement Agreement
- Agreed Upon Procedures (AUP) over:
  - Appropriation Limits calculation (GANN Limit)
  - Measure A – Commuter Assistance Program
- Advice on major transactions and other related reports

*Other Engagements Performed by the Firm Under Separate Agreement for Certain Claimants:*

- AUP - Measure A – Local Streets and Roads (LSR)
- TDA Claimant Audits
  - Article 3 (Bicycle and Pedestrian Funds)
  - Article 4 (Specialized Transit)
- AUP - Multiple Species Habitat Conservation Program (MSHCP)

The upcoming engagement for FY 2023/24 represents Eide Bailly's fifth year in providing audit and related services for the Commission. During June 2024, the FY 2023/24 audit commenced with the evaluation of the Commission's existing internal control environment along with review of significant transactions during the current year. The next step in the annual audit process is for the Auditor to prepare its annual communications outlining the following:

- Communicate responsibilities of the auditor in relation to the financial statement audit;
- Communicate an overview of the scope, timing, and deliverables of the audit;
- Provide timely observations arising from the audit that are relevant in overseeing the financial reporting process; and
- Obtain information relevant to the audit, which requires a dialogue with the Audit Ad Hoc Committee

**Next Steps**

In summary the audit process for FY 2023/24 is as follows:

- Interim Fieldwork (**June – July 2024**)
- Initiation communication with the Audit Ad Hoc committee (**July 2024**)
- Final Fieldwork (**September 2024 / October 2024**)
- Issuance of opinion on the Commission's financial statements (**October 2024**)

Attached is both Eide Bailly's presentation to the Audit Ad Hoc Committee detailing the plan for the FY 2023/24 audit and annual planning communication letter. Representatives from Eide Bailly will review this information during the meeting.

Attachments:

- 1) Audit Plan Presentation
- 2) FY 2023/24 Planning Communication



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## **RIVERSIDE COUNTY TRANSPORTATION COMMISSION**

Communication With Those Charged With Governance – Audit Ad Hoc Committee (Audit Entrance Meeting) – July 8, 2024

# AUDIT SCOPE

## PERFORM THE AUDITS OF THE:

## PERFORM THE FOLLOWING:

- Report on Compliance with Covenants and Provisions of the Reimbursement Agreements
- Agreed Upon Procedures (AUP) on the Appropriations Limit Calculation
- AUP Measure A Commuter Assistance Program
- Assist with the Pension and OPEB accounting entries
- Under separate contract, perform Measure A AUPs, TDA audits of certain claimants and MSHCP AUPs (RCA)

# OUR RESPONSIBILITY

U.S. Generally Accepted Auditing Standards and Government Auditing Standards.

Express opinions about whether the financial statements that have been prepared by management are presented fairly, in all material respects, in conformity with generally accepted accounting principles:

- Reasonable, not absolute assurance;
- Audit does not relieve management or governance of its responsibilities.

For Single Audit, express an opinion on compliance applicable to major federal programs.



# OUR RESPONSIBILITY

Our audit will include understanding the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing and extent of further audit procedures:

- Material misstatements may result from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity;
- No opinion on internal control will be expressed.

# OUR RESPONSIBILITY

Communicate other matters:

- Violations of laws or regulations that come to our attention.
- Qualitative aspects of accounting policies, accounting estimates and note disclosures.
- Significant difficulties, if any, encountered.
- Uncorrected misstatements and material corrected misstatements.
- Disagreements with management, if any.
- Management representations.
- Consultations with other accountants.



# PLANNED SCOPE AND TIMING





- 1** Design, implement, establish and maintain effective internal control over financial reporting, federal awards and goals and objectives.
- 2** Prevent and detect fraud and inform us of any known or suspected fraud.
- 3** Comply with laws and regulations.
- 4** Ensure that management and financial information is reliable and properly reported.
- 5** Make all personnel, financial records and related information available to us to prepare the financial statements.
- 6** Provide us a written representation letter.

# OUR APPROACH - INTERIM



# OUR APPROACH - FINAL



- Propose / discuss audit adjustments.
- Present findings and recommendations.
- Provide required communications to those charged with governance.



# QUESTIONS?

This presentation is presented with the understanding that the information contained does not constitute legal, accounting or other professional advice. It is not intended to be responsive to any individual situation or concerns, as the contents of this presentation are intended for general information purposes only. Viewers are urged not to act upon the information contained in this presentation without first consulting competent legal, accounting or other professional advice regarding implications of a particular factual situation. Questions and additional information can be submitted to your Eide Bailly representative, or to the presenter of this session.

# THANK YOU

**Roger Alfaro, CPA**

Partner

[ralfaro@eidebailly.com](mailto:ralfaro@eidebailly.com)

909.466.4410



**CPAs & BUSINESS ADVISORS**





July 8, 2024

To the Audit Ad Hoc Committee  
Riverside County Transportation Commission (RCTC)  
Riverside, California

This letter is provided in connection with our engagement to audit the financial statements and to audit compliance over major federal award programs of the Riverside County Transportation Commission (the Commission) as of and for the year ended June 30, 2024. Professional standards require that we communicate with you certain items including our responsibilities with regard to the financial statement audit, the compliance audit, and the planned scope and timing of our audits, including significant risks we have identified.

As part of the audit of the Commission's basic financial statements, we have also been engaged to perform audits over the following:

- Local Transportation Fund
- State Transit Assistance Fund
- State of Good Repair Fund
- Proposition 1B Rehabilitation, Safety, and Security Accounts
- Low Carbon Transit Operations Program Accounts
- 91 Express Lanes
- 15 Express Lanes

We have also been engaged to perform procedures over the following:

- Compliance with Covenants and Provisions of the Reimbursement Agreement
- Agreed Upon Procedures (AUP) over the GANN Limit
- AUP over Measure A Commuter Assistance
- Compile and propose the journal entries related to the pension and other postemployment benefit (OPEB) plans

### **Our Responsibilities**

As stated in our engagement letter dated May 13, 2024, we are responsible for conducting our audit in accordance with auditing standards generally accepted in the United States of America (GAAS), *Government Auditing Standards* of the Comptroller General of the United States of America, the requirements of the Single Audit Act, as amended; and the provisions of the audit requirements of Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance), for the purpose of forming and expressing opinions on the financial statements and on major federal award program compliance. Our audits do not relieve you or management of your respective responsibilities.



Our responsibility as it relates to the schedule of expenditures of federal awards is to evaluate its presentation for the purpose of forming and expressing an opinion as to whether it is presented fairly in all material respects in relation to the financial statements as a whole.

Our responsibility relating to other information, whether financial or nonfinancial information (other than financial statements and the auditor's report thereon), included in the entity's annual report includes only the information identified in our report. We have no responsibility for determining whether the introductory and statistical sections, are properly stated. We require that we receive the final version of the annual report (including all the documents that, together, comprise the annual report) in a timely manner prior to the date of the auditor's report, or if that is not possible as soon as practicable and, in any case, prior to the entity's issuance of such information.

### **Planned Scope of the Audit**

Our audits will include examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. Our audit is designed to provide reasonable, but not absolute assurance about whether the financial statements as a whole are free of material misstatement, whether due to error, fraudulent financial reporting, misappropriation of assets, or violations of laws or governmental regulations. Because of this concept of reasonable assurance and because we will not examine all transactions, there is a risk that material misstatements may exist and not be detected by us.

Our audit procedures will also include determining major federal programs and performing the applicable procedures described in the U.S. Office of Management and Budget *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the entity's major programs.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements or material noncompliance may not be detected exists, even though the audit is properly planned and performed in accordance with U.S. GAAS, *Government Auditing Standards* of the Comptroller General of the United States of America, the requirements of the Single Audit Act, as amended; and the provisions of the Uniform Guidance.

Our audits will include obtaining an understanding of the entity and its environment, including its internal control, sufficient to assess the risks of material misstatement of the financial statements, the risk of material noncompliance in the major federal award programs, and as a basis for designing the nature, timing, and extent of further audit procedures, but not for the purpose of expressing an opinion of the effectiveness of the entity's internal control over financial reporting. However, we will communicate to you at the conclusion of our audit, any material weaknesses or significant deficiencies identified. We will also communicate to you:

- Any violation of laws or regulations that come to our attention;
- Our views related to qualitative aspects of the entity's significant accounting practices, including accounting policies, accounting estimates, and financial statement disclosures;
- Significant difficulties, if any, encountered during the audit;
- Significant unusual transactions, if any;
- The potential effects of uncorrected misstatements on future-period financial statements; and
- Other significant matters that are relevant to your responsibilities in overseeing the financial reporting process.



Professional standards require us to design our audit to provide reasonable assurance that the financial statements are free of material misstatement whether caused by fraud or error. In designing our audit procedures, professional standards require us to evaluate the financial statements and assess the risk that a material misstatement could occur. Areas that are potentially more susceptible to misstatements, and thereby require special audit considerations, are designated as “significant risks.” Although we are currently in the planning stage of our audit, we have preliminarily identified the following significant risks that require special audit consideration.

- Management override of internal controls
- Revenue recognition
- Valuation of pension and other post-employment benefit liabilities

We expect to begin our audit in June 2024 and issue our reports on October 31, 2024.

This information is intended solely for the information and use of the Board of Commissioners, the Audit Ad Hoc Committee, and management of the Commission and is not intended to be and should not be used by anyone other than these specified parties.

Respectfully,

A handwritten signature in cursive script that reads "Eide Sully LLP".

Rancho Cucamonga, California



# **AGENDA ITEM 6J**



| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |  |
|---|--|
| <b>DATE:</b>                                      | September 11, 2024   |
| <b>TO:</b>  | Riverside County Transportation Commission   |
| <b>FROM:</b>                                      | Jonathan Marin, Senior Management Analyst<br>Ariel Alcon Tapia, Public Affairs Manager |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director   |
| <b>SUBJECT:</b>                                   | Quarterly Public Engagement Metrics Report, April - June 2024                          |

**STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Receive and file the Quarterly Public Engagement Metrics Report for April - June 2024.

**BACKGROUND INFORMATION:**

As part of the Commission’s Quarterly Public Engagement Metrics Report, Public Affairs staff collect, measure, and analyze significant amounts of data on public engagement and activities. Data includes website sessions, user acquisition sources, content engagement, social media interactions, public sentiment, and other forms of engagement originating from the Commission’s website, social media platforms, and other communication channels.

These communication channels serve as a critical link between Commission activity and members of the public. Through these channels, staff highlight project milestones, publish notices about ongoing and upcoming construction activity, emphasize partnerships, heighten awareness of programs and services, and provide numerous transportation related resources to the region’s diverse and growing communities. During the second quarter of 2024, information about the Traffic Relief Plan and investments made through voter-approved Measure A served as cornerstones for social media content, newsletter stories, and other forms of media.

This quarterly report measures the Commission’s progress toward public engagement goals, provides transparency into how the Commission is utilizing resources to engage with members of the public, and guides future decision-making. This report covers the second quarter of 2024, from April to June.

The metrics presented in this report are compared against previous quarter data, which can produce varying comparative results based on the diverse level of activity in any one quarter.

This quarter’s report includes two sets of data:

- 1) Metrics for RCTC’s overall public engagement activities including public sentiment on social media; social media followers, engagement, and reach; newsletter activity and subscribers; website use and access; and top pages visited.
- 2) Metrics for RCTC’s 71/91 Interchange Project including subscribers, email activity, website sessions, and social media following.

### **RCTC Overall Public Engagement**

#### **1) Social Media**

- a. Public sentiment during the second quarter of 2024 was generally positive. Content on RCTC’s social media channels featured Metrolink’s Angels Express Fan Train service, Freeway Service Patrol driver awards, federal funding successes, the Traffic Relief Plan, and various project updates. Traffic Relief Plan content produced high levels of engagement with mixed sentiment as users engaged in public discussions about the investments outlined in the plan.
- b. **Facebook:** During the second quarter, RCTC’s Facebook followers grew by a modest 2.6% – increasing from 13,643 to 13,995. Post engagement (likes, comments, video views, and shares) on the platform totaled 133,450 compared to 74,592 during the previous quarter, representing a 79% increase and reached a total of 1,977,758 users (followers and non-followers) - up 113% from the previous quarter’s mark of 927,231.
- c. **X:** Followers on the platform increased 1% from 1,798 to 1,824 – and overall engagement declined 43%, from 608 to 345, while impressions decreased 30%, from 14,721 to 9,915.
- d. **Instagram:** RCTC’s Instagram followers continued to grow through the second quarter, up 17%, jumping from 4,073 to 4,783. Engagement levels increased 225% from 74,592 to 141,900, as content reached 3,098,681 users on the platform – representing an increase of 622% compared to last quarter’s mark of 429,198.
- e. The significant increase in engagement and reach on Facebook and X during this quarter was a result of digital ad placements related to the Traffic Relief Plan.

- 2) **The Point E-Newsletter:** Public Affairs staff continue to draft and publish diverse, high-quality articles for RCTC’s official blog, **The Point**. The monthly email newsletter features stories that highlight the Commission’s successes, program funding, project milestones, and relevant community services and events. Newsletter subscribers decreased slightly – less than 1% - during the second quarter, from 6,964 to 6,952. 38% of subscribers opened the monthly **The Point** email and 3.7% clicked on email links to learn more.

#### **3) Website**

- a. During the second quarter, total website sessions increased by 78%, from 144,542 to 256,642. Over the same period, 219,849 unique visitors accessed the website - an 81% increase compared to the 121,501 visitors during the previous quarter. The increase in sessions and users is attributed to visitors to the Traffic Relief Plan pages.

- b. Direct site visits (typing in *rctc.org*) made up 62% of all website sessions. Social media-driven website traffic, including paid ads, increased during the second quarter – accounting for 21% of website visits, while search engine traffic accounted for 14%, and referrals from email links, QR codes, and external websites, such as The Patch, KESQ, The Press-Enterprise, and city websites, made up the remaining 3% of total website sessions.
- c. Website access was largely driven by mobile devices (phones and tablets) - making up 72% of all traffic - while desktop users accounted for the remaining 28%.
- d. The Traffic Relief Plan regional subset of webpages (Moreno Valley, Riverside/Corona, and Coachella Valley, respectively) were the most popular pages of the website during the second quarter.

### **71/91 Interchange Project Public Engagement**

- 1) **Emails:** Construction update email subscribers totaled 2,957 during the second quarter, representing a 6% increase. The project team received 11 inquiries during this quarter.
- 2) **Texts:** 1,843 people registered to receive text message updates of the project – a 6% increase from the previous quarter.
- 3) **Webpage:** 22,289 visits to construction update, closures, and project-related webpages occurred during the second quarter – totaling 136,964 to date.
- 4) **Social Media:** During the second quarter, followers on Facebook grew by 1%, up to 1,532. Instagram followers increased less than 1%, to 1,991. Followers on X increased by 28%, up to 237.

### **FISCAL IMPACT:**

This is an informational item. There is no fiscal impact.

Attachments:

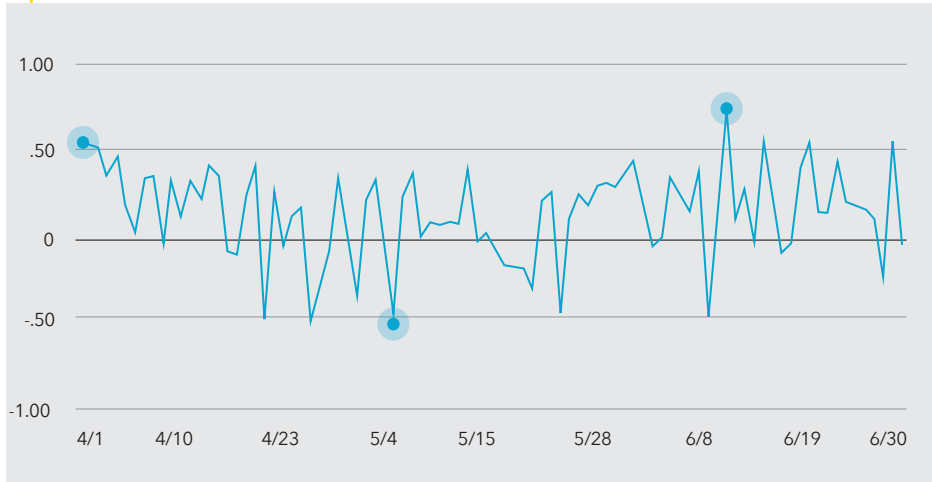
- 1) RCTC Overall Public Engagement Metrics
- 2) 71/91 Interchange Construction Public Engagement Metrics







## Overall Social Media Sentiment



4/1: Positive engagement on Freeway Service Patrol driver awards  
 5/5: Negative reactions and engagement on Traffic Relief Plan post  
 6/10: Positive sentiment on post highlighting Metrolink's Angels Express Fan Train pop up event

## Newsletter

**Subscribers**  
6,952

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**Average Open**  
38%

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**Average Click**  
3.7%

## Web

**256,642**

Number of Sessions

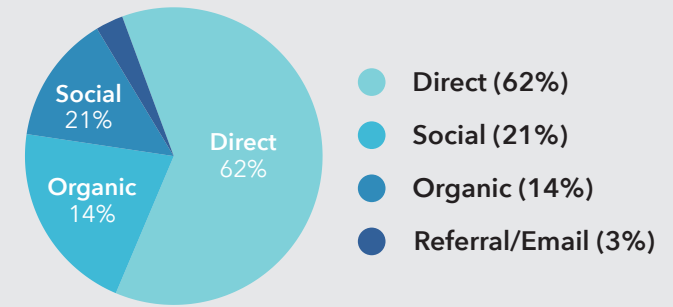
**+78%**

**219,849**

Number of Unique Users

**+81%**

### Top Channels



### NOTES

Website traffic from social media platforms increased this quarter due to Traffic Relief Plan advertising campaigns.

## Social Media

### Facebook

**Followers**  
13,995 **+2.6%**

**Engagement**  
133,450 **+79%**

**Reach**  
1,977,758 **+113%**

### X

**Followers**  
1,824 **+1.5%**

**Engagement**  
345 **-43%**

**Impressions**  
9,915 **-30%**

### Instagram

**Followers**  
4,783 **+17%**

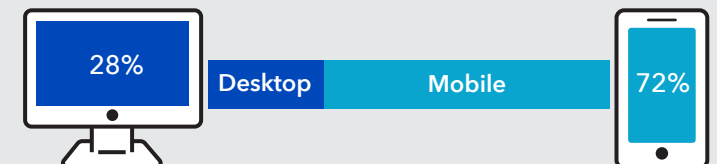
**Engagement**  
141,900 **+225%**

**Reach**  
3,098,681 **+622%**

### Top Pages Visited

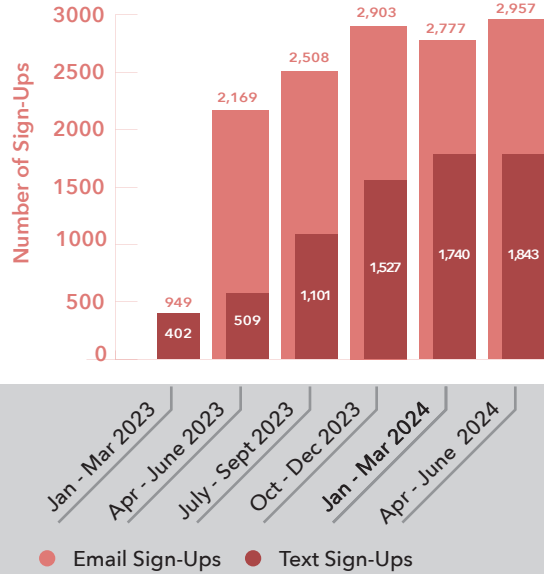
- Traffic Relief Plan - Moreno Valley
- Traffic Relief Plan - Riverside/Corona
- Traffic Relief Plan - Coachella Valley

### Desktop vs Mobile Users

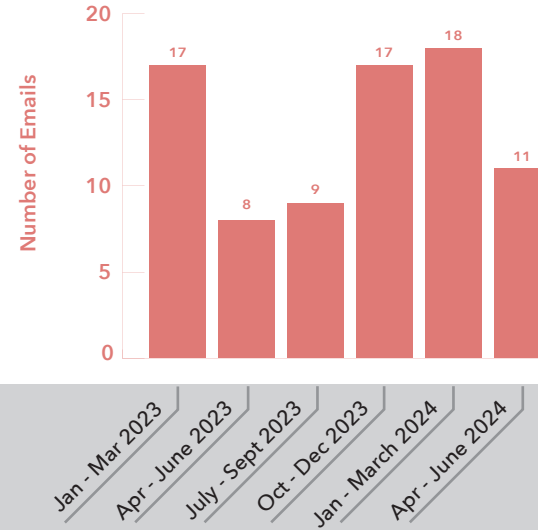




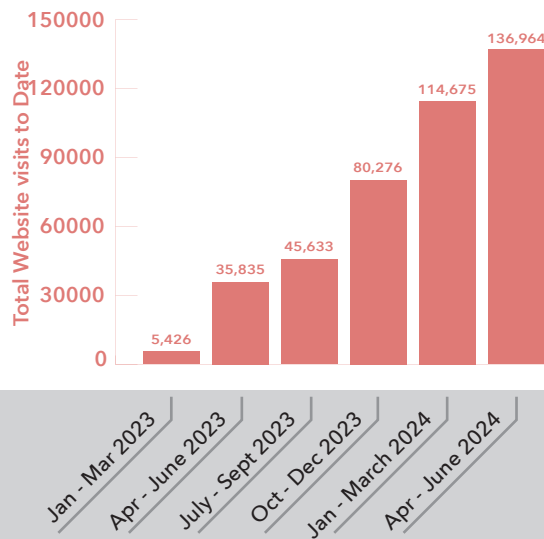
## Email & Text Alert Sign-Ups



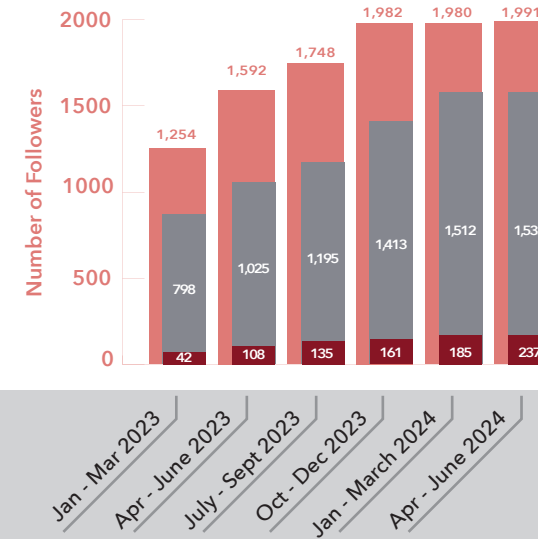
## Emails to Project Team



## Website Sessions



## Social Media Followers



Includes blog posts and the project, construction update, and closures webpages



# **AGENDA ITEM 6K**



| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |  |
|---|--|
| <b>DATE:</b>                                      | September 11, 2024   |
| <b>TO:</b>  | Riverside County Transportation Commission   |
| <b>FROM:</b>                                      | Andrew Sall, Senior Management Analyst, Legislative Affairs<br>Tyler Madary, Legislative Affairs Manager |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director   |
| <b>SUBJECT:</b>                                   | State and Federal Legislative Update   |

**STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Receive and file a state and federal legislative update.

**BACKGROUND INFORMATION:**

**State Update**

***California State Legislature 2023-24 Session***

The California Legislature reconvened from summer recess on August 5 to consider more than 1,350 bills before the August 31 deadline. Of the bills remaining, more than 1,000 will be considered by the Senate and Assembly Appropriations committees. Following the adjournment of the Legislature on August 31, Governor Newsom must sign or veto bills by September 30.

***Senate Concurrent Resolution 13 (Roth)***

On August 9, RCTC submitted a letter of support for Senate Concurrent Resolution (SCR) 13 by Senator Richard Roth (Riverside), to the Senate Transportation Committee. SCR 13 would designate the State Route 60, SR-91, and Interstate 215 interchange as the Joseph Tavaglione Memorial Interchange. The resolution serves to honor Joseph Tavaglione – a long-serving member of the California Transportation Commission, Riverside native, and advocate for transportation – who passed away on August 1.

SCR 13 passed out of the Senate Transportation Committee on August 13 with a recommendation to be considered by the Senate Appropriations Committee for inclusion in the consent calendar.

### ***Senate Bill 1098 (Blakespear) – Letter of Concern***

On July 19, RCTC staff submitted a letter of concern regarding Senate Bill (SB) 1098 by Senator Catherine Blakespear (Encinitas). The bill requires the California State Transportation Agency (CalSTA) Secretary to submit a report to the Legislature by January 1, 2026, relating to rail service in the Los Angeles – San Diego – San Luis Obispo (LOSSAN) Rail Corridor. The bill requires the CalSTA Secretary to convene a working group to develop recommendations for inclusion in the report, exploring a variety of issues ranging from the management structures of intercity and regional rail service in the corridor, the capital improvement planning process, operations, coastal resilience, and opportunities for interagency coordination. SB 1098 further requires the CalSTA Secretary to submit a report every two years on performance of the rail corridor. RCTC staff have been monitoring this legislation since RCTC is a member agency of LOSSAN and the Southern California Regional Rail Authority—the operator of Metrolink service.

RCTC’s letter, reflecting the amendments in print as of May 14, highlights concerns such as the bill’s failure to recognize RCTC’s passenger rail rights along the LOSSAN corridor, overreach into existing project planning and accountability measures, potential unintended impacts to Metrolink service in inland regions, and the short time frame for the working group to meet and develop recommended actions. Following the submittal of the letter and suggested amendments, staff continued to work with the author’s office to identify opportunities to address the stated concerns. RCTC submitted copies of the letter to members of the Assembly Appropriations Committee prior to the bill’s hearing on August 15, as well as to members of the Riverside County legislative delegation. The bill was approved by the committee with amendments and will next be considered on the Assembly Floor. RCTC will continue to engage with delegation members as appropriate.

### **Federal Update**

The House Appropriations Committee conducted markups of and approved Fiscal Year (FY) 2025 Transportation-Housing and Urban Development (THUD) Appropriations legislation. On July 25, the Senate Appropriations Committee also approved the FY 2025 THUD Appropriations bill, which did not include RCTC’s Congressionally Directed Spending request of \$3 million for the Mid County Parkway: Ramona Expressway, submitted by Senator Alex Padilla and Senator Laphonza Butler.

Congress has until September 30 to approve a federal budget bill or pass a short-term continuing resolution to avoid a government shutdown. Staff will keep the Commission apprised of the federal appropriations process.

### **FISCAL IMPACT:**

This is a policy and information item. There is no fiscal impact.



Attachments:

- 1) Legislative Matrix – September 2024
- 2) RCTC SCR 13 Support Letter
- 3) RCTC SB 1098 Letter of Concern



## RIVERSIDE COUNTY TRANSPORTATION COMMISSION - POSITIONS ON STATE AND FEDERAL LEGISLATION – SEPTEMBER 2024

| Legislation/<br>Author       | Description   | Bill<br>Status  | Position                        | Date of Board<br>Adoption |
|------------------------------|---|---|---------------------------------|---------------------------|
| <b>AB 6<br/>(Friedman)</b>   | This bill provides significant new oversight to the California Air Resources Board in the approval process of a metropolitan planning organization's Sustainable Communities Strategy, methodology used to estimate greenhouse gas emissions (GHG), and amendments to a Regional Transportation Plan. AB 6 also sets new GHG reduction targets of 2045, which does not reflect future cost constraints and diminishing revenue from the state's gasoline taxes. These new burdensome requirements will likely result in significant delays to transportation projects.  | Amended on May 30, 2024.<br>Pulled from Senate Transportation Committee.<br><br>June 11, 2024 | <i>Oppose Based on Platform</i> | 5/24/2023                 |
| <b>AB 7<br/>(Friedman)</b>   | This bill requires the California State Transportation Agency, California Department of Transportation, and California Transportation Commission to consider specific goals as part of their processes for project development, selection, and implementation. AB 7 may impact the allocation of billions of dollars in state transportation funding, infringing on RCTC's ability to deliver critically needed transportation infrastructure in Riverside County.  | Ordered to the inactive file.<br>Two-year bill.<br><br>September 11, 2023                     | <i>Oppose Based on Platform</i> | 5/25/2023                 |
| <b>AB 558<br/>(Arambula)</b> | This bill restructures the Fresno County Transportation Authority (FCTA) by increasing its board membership from nine to thirteen members. This restructuring is done without the consensus and support from regional stakeholders and sets a concerning precedent for RCTC and other regional transportation agencies that rely upon a collaborative process to be effective.<br><br>Additionally, the bill was amended on April 18 to subject a county transportation expenditure plan prepared by the Fresno County Transportation Authority (FCTA) to the requirements of the California Environmental Quality Act. | Failed deadline.<br><br>January 31, 2024  | <i>Oppose Based on Platform</i> | 4/10/2023                 |
| <b>AB 1385<br/>(Garcia)</b>  | This bill would raise RCTC's maximum tax rate authority from 1% to 1.5%.  | Approved by the Governor.<br><br>October 8, 2023  | <i>Support</i>                  | 3/8/2023                  |
| <b>AB 1525<br/>(Bonta)</b>   | This bill significantly narrows the location and types of projects eligible to receive state transportation funding by requiring 60% of funds to be allocated to priority populations.  | Failed deadline.<br><br>January 31, 2024  | <i>Oppose Based on Platform</i> | 4/11/2023                 |

| <b>Legislation/<br/>Author</b> | <b>Description</b>  | <b>Bill<br/>Status</b>   | <b>Position</b>                                      | <b>Date of Board<br/>Adoption</b> |
|--------------------------------|---|--|--|-----------------------------------|
| <b>AB 1957<br/>(Wilson)</b>    | This bill extends the sunset date to 2030 on a pilot program allowing for specified counties to utilize the best value procurement process for construction projects in excess of \$1 million. The bill additionally expands the program to all counties.   | Approved by the Governor.<br>July 2, 2024  | <i>Support<br/>Based on<br/>Platform</i>             | 2/15/2024                         |
| <b>AB 2535<br/>(Bonta)</b>     | This bill prohibits the programming of funding under the Trade Corridor Enhancement Program (TCEP) established under Senate Bill 1 (2017) from projects that expand the physical footprint of a highway in communities with high impacts from international trade and goods movement. The bill also sets a target of expending 15% of TCEP funds towards zero-emission freight infrastructure, with increases in each funding cycle until reaching 50%.                                       | Failed deadline.<br>May 16, 2024   | <i>Oppose Based<br/>on<br/>Commission<br/>Action</i> | 3/13/2024                         |
| <b>SB 617<br/>(Newman)</b>     | This bill, until January 1, 2029, would authorize a transit district, municipal operator, consolidated agency, joint powers authority, regional transportation agency, or local or regional agency, as described, to use the progressive design-build process for up to 10 public works projects in excess of \$5 million for each project. The bill would specify that the authority to use the progressive design-build process.  | Approved by the Governor.<br>October 4, 2023   | <i>Support<br/>Based on<br/>Platform</i>             | 4/5/2023                          |
| <b>SB 768<br/>(Caballero)</b>  | This bill requires the California State Transportation Agency, in consultation with stakeholders such as RCTC, to conduct a study by 2028 highlighting how vehicle miles traveled (VMT) is used as a metric for measuring transportation impacts pursuant to CEQA. The bill would require the study to include, among other things, an analysis of the differences in the availability and feasibility of mitigation measures for vehicle miles traveled in rural, suburban, and urban areas. | Placed on the Assembly<br>Appropriations Committee<br>Suspense file.<br>July 2, 2024 | <i>Support<br/>Based on<br/>Platform</i>             | 6/4/2024                          |
| <b>SCR 13 (Roth)</b>           | The resolution would designate the State Route 60, 215/91, 215 Separation (Bridge Number 56-0402) as the Joseph Tavaglione Memorial Interchange.  | Re-referred to the Senate<br>Transportation Committee.                               | <i>Support</i>                                       | 1/24/23                           |



4080 Lemon St. 3rd Fl. Riverside, CA 92501  
 Mailing Address: P.O. Box 12008 Riverside, CA 92502-2208  
 951.787.7141 • [rctc.org](http://rctc.org)

August 9, 2024

The Honorable David Cortese  
 Chair, Senate Transportation Committee  
 State Capitol, Room 405  
 Sacramento, CA 95814

**RE: RCTC's Support for Senate Concurrent Resolution 13 (Roth)**

Dear Chair Cortese:

On behalf of the Riverside County Transportation Commission (RCTC), I write in support of Senate Concurrent Resolution (SCR) 13, to be heard in the Senate Transportation Committee on August 13. SCR 13 designates the 60/91/215 Interchange as the Joseph Tavaglione Memorial Interchange in honor of Joseph Tavaglione, a long-serving member of the California Transportation Commission (CTC) and advocate for transportation in the inland Southern California region who passed away on August 1.

Riverside County, the greater inland Southern California region, and the entire State of California benefitted from the knowledge, devotion, and tenacity of Mr. Tavaglione. It is difficult, if not impossible, to find an individual who remained in the community in which he was raised and committed so much of his time and resources to giving back to his community. Mr. Tavaglione was one of California's most respected advocates for transportation investment. He served all Californians by carrying out his duties with humility and dignity, providing a steady and level-headed brand of leadership. He was a source of counsel and wisdom sought by transportation leaders at all levels of government and in the private sector.

RCTC specifically benefitted from Mr. Tavaglione's service on the board of the California Transportation Commission for over 21 years. He was pivotal to many critical transportation projects in Riverside County, including the 60/91/215 Interchange, which makes the designation of that interchange as the Joseph Tavaglione Memorial Interchange a necessary and fitting an honor.

RCTC is proud to support SCR 13 to honor the legacy of Mr. Tavaglione and we respectfully request your support for the resolution. Should you have any questions, please contact me at (951) 787-7141 or [ahake@rctc.org](mailto:ahake@rctc.org).

Thank you,

A handwritten signature in black ink, appearing to read "Aaron Hake".

Aaron Hake  
 Executive Director

cc: Members, Senate Transportation Committee  
 Senator Richard Roth, 31<sup>st</sup> Senate District  
 Riverside County Legislative Delegation





4080 Lemon St. 3rd Fl. Riverside, CA 92501  
 Mailing Address: P.O. Box 12008 Riverside, CA 92502-2208  
 951.787.7141 • rctc.org

July 19, 2024

The Honorable Catherine Blakespear  
 California State Senate  
 1021 O Street, Suite 7340  
 Sacramento, CA 95814

**Subject: Letter of Concern and Request to Amend SB 1098**

Dear Senator Blakespear:

On behalf of the Riverside County Transportation Commission (RCTC), I write to share concerns and offer amendments to Senate Bill (SB) 1098 for your consideration. RCTC fully supports continued coordination between the Los Angeles-San Diego-San Luis Obispo (LOSSAN) and the California State Transportation Agency to address climate resiliency challenges in the coastal zone. However, we are concerned that several of the recommendations prescribed in SB 1098 for the proposed working group to develop for the corridor are overreaching, with potential to impede the local responsiveness and accountability of not just LOSSAN, but also regional rail agencies and the member agencies of each. This is of great concern to RCTC, which holds exclusive passenger rail rights in the BNSF San Bernardino Subdivision within the LOSSAN corridor, is a member agency of LOSSAN and the Southern California Regional Rail Authority (SCRRA)—the operator of Metrolink service—and subsidizes Metrolink commuter rail service in Riverside County which runs in the LOSSAN corridor.

We recognize the importance of coordination with regional rail agencies and recommend that the expected deliverables of the proposed working group remain focused on the delivery of LOSSAN services and climate resiliency for more tangible outcomes. Additionally, RCTC believes more time is needed for this work and the completion of the report proposed in Government Code Section 14072.6(a)(1).

Specifically, RCTC has identified several challenges with the bill as amended on May 16, 2024, including:

- **Failure to Recognize Ownership Rights Along the LOSSAN Corridor** – RCTC purchased exclusive passenger rail rights (excluding Amtrak) along the BNSF San Bernardino Subdivision, which includes a portion of the LOSSAN corridor in 1992 in the form of an easement. At the same time RCTC entered into a shared use agreement (SUA) with BNSF and the Orange County Transportation Authority (OCTA) that remains in full force and effect today. These legal arrangements specify the public improvements and concomitant public benefits (in the form of passenger rail slots) along the BNSF San Bernardino Subdivision that cannot be ignored. The RCTC easement and SUA give RCTC a legal interest in passenger rail planning, funding, project delivery, and operations in this segment of the LOSSAN corridor. Other public agencies in the LOSSAN and SCRRA joint powers authorities have ownership interests and public investments in various components of infrastructure along the LOSSAN corridor that also must be recognized in any planning effort and recommendations produced by the working group. This is a first principle that RCTC holds as essential to any legislation regarding the LOSSAN corridor. Therefore, RCTC proposes the following amendment to SB 1098:

~~(2)~~ (3) *The working group shall recognize the ownership and rights held in the LOSSAN corridor, as well as past and ongoing service, operational, and capital investments made by the member agencies of the LOSSAN Rail Corridor Agency, the Southern California Regional Rail Authority, and the North County Transit District, and shall not make recommendations that negatively impact ownership rights, regional rail service, operations, or capital projects funded or subsidized by a given member agency.*

- **Preserving Local Responsiveness and Accountability** – Section 14072.6(c)(1)(C) seeks to require the working group to identify alternative management and operations models or structures to improve intercity and regional rail services, despite LOSSAN’s successes since assuming operation of the Pacific Surfliner from the state. Contrary to the observations offered in the Senate Office of Research report published in December 2023, sufficient evidence has not been presented that correlates the governance structure of LOSSAN to impediments to adequate planning, funding, or project delivery. LOSSAN, SCRRA, and its member agencies are all governed by boards comprised of local elected officials that are directly accountable to their constituents and local jurisdictions, ensuring that public services effectively respond to public need. These governing boards and their professional staffs have a track record of collaborative governance and problem-solving across jurisdictional boundaries, including with state government and private railroad partners. Our common challenge is insufficient funding to address the needs of the LOSSAN corridor. RCTC’s position is that management and operation of LOSSAN and SCRRA should be retained at the regional level as constituted today. Of particular emphasis is the bill’s overreach beyond the stated focus on LOSSAN into “regional rail.” Therefore, RCTC recommends this section be struck from the bill. RCTC similarly recommends that Sections 14072.6(c)(1)(F) and (G) be struck from the bill. Metropolitan Planning Organizations (MPO) are valued planning partners, and RCTC is a member of the Southern California Association of Governments (SCAG) with two of the last four chairs of SCAG being RCTC Commissioners. Nonetheless, the anticipated deliverables of these provisions may not be achievable since MPO structures across the LOSSAN corridor vary fundamentally. These reporting and goalsetting provisions for the LOSSAN corridor are at best duplicative of current planning efforts at the state and local levels, and at their worst expose rail projects of member agencies to additional review by agencies such as the California Air Resources Board that could hamper project delivery.
- **Unnecessary Overreach into Regional Rail** – Despite the stated focus on the success of Pacific Surfliner and the LOSSAN corridor, SB 1098 overreaches in several provisions, including in those identified above, to include references to regional rail and passenger rail. As a member agency of the SCRRA joint powers authority that funds rail improvements and Metrolink service in Riverside County, various provisions of SB 1098 could lead to recommendations that, if implemented, could dismantle the locally responsive structure of SCRRA and establish priorities for operational and service improvements that could negatively impact the levels of service for Riverside County residents that rely on Metrolink service to reach jobs and education centers throughout southern California. RCTC recommends replacing references to “regional rail” and “passenger rail” with “intercity rail” in Sections 14072.6(c)(1)(C), (D), (F), and (G), as well as specifying “intercity rail” in Section 14072.10(a).
- **Conflicting Priorities and Potential for Regional Disparities** – It is RCTC’s understanding that SB 1098 has a dual intention of coordinating climate resiliency efforts, as well as to assess and make recommendations for improved performance of the LOSSAN corridor. RCTC supports continued coordination in the LOSSAN Corridor, including addressing climate resiliency challenges in the coastal zone. While RCTC’s understanding is that the structure of the working group is intended to grant equal consideration of its participants and their interests, Section 14072.6(c)(2) could be perceived by the working group to place an emphasis on the coast in a manner that could encourage recommendations beyond coastal resiliency that favor operational or service improvements in the coastal zone that generate unintended operational or service impacts in inland portions of the Metrolink system. RCTC’s proposed language highlighted in the first bullet would alleviate this concern by allowing balanced consideration of the rights and financial contributions of member agencies.

Based on the challenges outlined above, RCTC has enclosed for your consideration amendments to address our concerns, including the new language intended to ensure that the working group recognizes the ownership and rail rights held in the LOSSAN corridor, and prevent the working group from making recommendations that negatively impact regional rail service, operations, or capital projects funded or subsidized by a given member agency, particularly RCTC. Without these recognitions and assurances, RCTC would be placed in the unfortunate position of opposing SB 1098. Furthermore, RCTC



The Honorable Catherine Blakespear

July 19, 2024

Page 3

would oppose any effort to fund the provisions of SB 1098 through the State Highway Account or the Public Transportation Account.

RCTC appreciates the time your staff has spent with us to discuss concerns and we look forward to continuing that partnership with your office as you consider these amendments. Should you have any questions, please do not hesitate to contact me at (951) 787-7141 or [ahake@rctc.org](mailto:ahake@rctc.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "Aaron Hake", with a stylized flourish at the end.

Aaron Hake  
Executive Director

Attachment: RCTC Proposed Amendments

AMENDED IN SENATE MAY 16, 2024

AMENDED IN SENATE MARCH 20, 2024

**SENATE BILL**

**No. 1098**

**Commented [TM1]:** RCTC proposed amendments outlined in blue italics and red strikethroughs below.

**Introduced by Senator Blakespear**  
**(Coauthors: Senators Allen, Laird, Limón, Newman, and Umberg)**  
(Coauthors: Assembly Members Boerner, Davies, Dixon, and Hart)

February 13, 2024

An act to add Sections 14072.8 and 14072.10 to, and to add and repeal Section 14072.6 of, the Government Code, relating to transportation.

legislative counsel's digest

SB 1098, as amended, Blakespear. Passenger and freight rail: LOSSAN Rail Corridor.

Existing law establishes the Department of Transportation in the Transportation Agency under the control of an executive officer known as the Director of Transportation. Existing law authorizes the Department of Transportation, subject to approval of the Secretary of Transportation, to enter into an interagency transfer agreement under which a joint powers board assumes responsibility for administering the state-funded intercity rail service in certain rail corridors, including the LOSSAN Rail Corridor. Existing law defines the LOSSAN Rail Corridor as the intercity passenger rail corridor between San Diego, Los Angeles, and San Luis Obispo. Pursuant to this authority, the department entered into an interagency transfer agreement with the LOSSAN Rail Corridor Agency to administer intercity passenger rail service in the LOSSAN Rail Corridor.

This bill would require the Secretary of Transportation to provide guidance and recommendations to, and coordination between,

stakeholders as necessary to ensure the performance of the LOSSAN Rail Corridor, as specified.

This bill would also require the Secretary of Transportation, in consultation with ~~the Director of Transportation, the California Transportation Commission, the Secretary for Environmental Protection, Protection~~ and the Secretary of the Natural Resources Agency, to submit a report to the Legislature on or before January 1, 2026, regarding the LOSSAN Rail Corridor that includes specified information. The bill would also require the Secretary of Transportation, in coordination with stakeholders responsible for operating rail services along the LOSSAN Rail Corridor, to submit a report to the Legislature on or before January 1, 2027, and biennially thereafter, on the performance of the LOSSAN Rail Corridor, as provided.

This bill would require ~~an unspecified entity~~ *the Secretary of Transportation* to convene a working group composed of representatives of certain types of entities, including, among others, metropolitan planning organizations from specified counties. The bill would require the working group to submit ~~a report to the Legislature on or before January 1, 2026, that provides~~ *recommendations to the secretary for inclusion in the above-described report due on or before January 1, 2026*, on various topics relating to rail service in the LOSSAN Rail Corridor. Before ~~the report is~~ *recommendations are* submitted to the ~~Legislature, secretary,~~ the bill would require the ~~report recommendations~~ *to be reviewed and approved by* ~~submitted to~~ the LOSSAN Rail Corridor Agency, the Southern California Regional Rail Authority, and the North County Transit ~~District.~~ *District for review and consideration.* By adding to the duties of local agencies, the bill would impose a state-mandated local program.

This bill would make legislative findings and declarations as to the necessity of a special statute for the LOSSAN Rail Corridor.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. The act shall be known, and may be cited, as the Southern California Rail Revitalization Act.

SEC. 2. Section 14072.6 is added to the Government Code, to read:

14072.6. (a) (1) The secretary, in consultation with ~~the director, the commission,~~ the Secretary for Environmental Protection, *Protection* and the Secretary of the Natural Resources Agency, shall submit a report to the Legislature on or before January 1, 2026~~7~~, regarding the LOSSAN Rail Corridor that includes all of the following information:

(A) *A baseline summary of transportation and environmental conditions in existence as of January 1, 2025, along the rail corridor.*

~~(A)~~

(B) *Prioritized capital improvement projects in the corridor necessary to improve current services and accommodate future passenger and freight service growth consistent with the State Rail Plan prepared pursuant to Section 14036.*

~~(B)~~

(C) *Prioritized ~~resiliency~~ improvement projects in the corridor necessary to ensure the ~~safe and continued movement of trains.~~ resiliency of natural resources and transportation infrastructure.*

~~(C)~~

(D) *A description of administrative actions taken by the Transportation Agency using authority in existence before January 1, 2025, to improve operations and performance of the corridor.*

~~(D)~~

(E) *Recommendations for the corridor to connect with other passenger rail services.*

~~(E)~~

(F) *Strategies to support and improve existing rail service and ~~resiliency planning in the corridor.~~ increase ridership, including a description of necessary operations funding for increased service frequencies.*

(G) *Recommendations to achieve zero-emission state-supported equipment, including an analysis of recommended technologies and necessary infrastructure.*

**Commented [TM2]:** RCTC believes that more time will be required to complete the report as proposed by the author.

*(H) Strategies and recommendations to support coastal hazard resiliency planning in the corridor.*

*(1) Recommendations and information regarding any actions taken in response to those recommendations received from the working group pursuant to subdivision (c).*

*(2) In preparing the report pursuant to this subdivision, the secretary shall consult existing ~~plans and studies~~ plans, studies, and guidance for the LOSSAN Rail Corridor, including, but not limited to, the LOSSAN Rail Corridor Optimization ~~Study and Study~~, the LOSSAN Rail Corridor Agency Business Plan adopted by the LOSSAN Rail Corridor ~~Agency~~ Agency, and the guidance document “Critical Infrastructure at Risk: Sea Level Rise Planning Guidance for California’s Coastal Zone” adopted by the California Coastal Commission.*

*(3) When undertaking the duties pursuant to this subdivision, the secretaries identified in paragraph (1) may consult with any other state agency.*

*(4) For projects identified pursuant to paragraph (1), the secretary shall include in the report all available funding sources, projected completion schedules for priority projects, current funding shortfalls, and recommended strategies and plans to address any funding shortfall.*

*(b) The \_\_\_\_\_ secretary shall convene a working group that includes, but is not limited to, representatives of all of the following entities:*

*(1) LOSSAN Rail Corridor track owners.*

*(2) LOSSAN Rail Corridor passenger and freight rail ~~operators~~ operators, including managing agencies, joint powers authorities, and transit districts responsible for rail services.*

*(3) The county transportation commissions for the Counties of Los Angeles, Orange, Riverside, San Bernardino, and Ventura established pursuant to Division 12 (commencing with Section 130000) of the Public Utilities Code.*

*(4) The metropolitan planning organizations for the Counties of Los Angeles, Orange, San Diego, San Luis Obispo, Santa Barbara, and Ventura.*

*(5) Business, community, transportation, environmental, labor, and civic organizations.*

*(6) The California Coastal Commission.*

(c) (1) The working group convened pursuant to subdivision (b) shall submit a report to the Legislature on or before January 1, 2026, that provides recommendations to the secretary for inclusion in the report required pursuant to subdivision (a) on all of the following as necessary to ensure the long-term viability of comprehensive and coordinated passenger and freight rail services in, or that connect to, the LOSSAN Rail Corridor: Corridor as of January 1, 2025:

(A) Dedicated and formula funding distributions available for passenger rail operations, including intercity and regional rail services along the corridor.

(B) Strategies to increase rail service coordination and reduce disruptions or delays, including, but not limited to, those caused by climate resiliency, resiliency vulnerabilities, track closures, state of good repair, equipment, and staffing. The recommendations made pursuant to this subparagraph should result in improved maintenance and conditions of assets, reduced track closures, and greater on-time performance.

~~(C) Alternative management and operations models or structures that improve intercity and regional rail services.~~

~~(D) Changes to state statutes, rules, or funding relating to intercity and regional rail services, necessary to improve the quality, performance, usage, management, or frequency of passenger intercity rail services with a focus on streamlining, clarifying, and improving existing processes or procedures.~~

~~(E) Opportunities for rail to accelerate and support equity, safety, sustainability, zero emissions, equipment, and economic development goals.~~

~~(F) Opportunities for metropolitan planning organizations to analyze, describe, and report progress in operating, maintaining, and improving the corridor consistent with state and local planning documents in their sustainable communities strategies or, if applicable, alternative planning strategies, adopted pursuant to Section 65080.~~

~~(G) Opportunities for metropolitan planning organizations to adopt multiregional goals relating to passenger and freight rail service, capital improvement projects related to those services, and resiliency of those services along the corridor to include in their respective sustainable communities strategies or, if applicable, alternative planning strategies, adopted pursuant to Section 65080.~~

**Commented [TM3]:** RCTC has fundamental local control concerns about this provision and takes particular issue with the inclusion of regional rail.

**Commented [TM4]:** RCTC has fundamental concerns about the inclusion of MPOs and the SCS/ACS process in these provisions, and would not support the inclusion of passenger rail, which broadens the application beyond intercity rail.

(HE) Improving connections to existing and planned public transit services.

(HF) Strategies that increase ridership and use of rail services.

(JG) Strategies to coordinate fleet equipment planning and management.

(2) *The working group shall consider the known and expected impacts of recommendations on the coastal environment and local communities, and consider opportunities to support the coastal zone and local communities when making recommendations.*

(3) *The working group shall recognize the ownership and rights held in the LOSSAN corridor, as well as past and ongoing service, operational, and capital investments made by the member agencies of the LOSSAN Rail Corridor Agency, the Southern California Regional Rail Authority, and the North County Transit District, and shall not make recommendations that negatively impact ownership rights, regional rail service, operations, or capital projects funded or subsidized by a given member agency.*

(4) ~~The report~~ recommendations required pursuant to this subdivision shall ~~include~~ be developed with meaningful public engagement led by the working group convened pursuant to subdivision (b).

(5)

(45) Before submitting the ~~report~~ recommendations required pursuant to this subdivision to the ~~Legislature~~, secretary, the working group shall submit the ~~report~~ recommendations to the governing boards of the LOSSAN Rail Corridor Agency, the Southern California Regional Rail Authority, and the North County Transit District for review and ~~approval~~ consideration. A governing board described in this paragraph shall notify the secretary of any action taken in response to these recommendations for inclusion in the report pursuant to subdivision (a).

(d) (1) ~~The reports~~ report to be submitted pursuant to ~~this section~~ subdivision (a) shall be submitted in compliance with Section 9795.

(2) Pursuant to Section 10231.5, this section is repealed on January 1, 2030.

SEC. 3. Section 14072.8 is added to the Government Code, to read:

14072.8. (a) Notwithstanding Section 10231.5, the secretary, in coordination with stakeholders responsible for operating rail services along the LOSSAN Rail Corridor, shall submit a report

**Commented [TM5]:** Our understanding is that the bill has a dual intention of coordinating climate resiliency efforts, as well as to assess and make recommendations for improved performance of the LOSSAN corridor.

It is also our understanding that the structure of the working group is intended to grant equal footing and consideration of its various participants.

Throughout the bill, most references to the coast or resiliency are limited to specific provisions. However, this provision can be perceived by the working group to place an emphasis on the coast in a manner that could encourage recommendations that favor operational or service changes on the coast at the expense of operations and service in inland portions of the Metrolink system.

RCTC believes the following proposed amendment would alleviate these concerns.

to the Legislature on or before January 1, 2027, and every two years thereafter, on the performance of the LOSSAN Rail Corridor that includes all of the following information:

- (1) Performance, ridership, usage, and quality of rail services.
- (2) Updates to capital improvement planning.
- (3) Progress in delivering fleet and infrastructure improvement projects.
- (4) Improvements to service and fare coordination.
- (5) Opportunities to increase the quality and frequency of services.

(6) Updates on corridor resiliency, prepared in coordination with the California Coastal Commission, including updates on any projects identified by the LOSSAN Rail Corridor Agency pursuant to Section 14072.4 to increase climate resiliency on the corridor. These updates shall include the status of current and planned development projects in the coastal zone and an analysis of environmental conditions.

(b) A report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795.

SEC. 4. Section 14072.10 is added to the Government Code, to read:

14072.10. (a) The secretary shall provide guidance and recommendations to, and coordination between, stakeholders as necessary to ensure the performance of *intercity rail service in the LOSSAN Rail Corridor*.

(b) The responsibilities set forth in subdivision (a) shall include planning, as needed, for any of the following:

- (1) Service frequencies.
- (2) Equipment and fleet management.
- (3) Infrastructure improvement and state-of-good repair projects.
- (4) Resiliency of the ~~corridor~~ *corridor, including coordination with the California Coastal Commission as it relates to the California coastal zone.*

SEC. 5. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique need to address the resiliency and performance of the LOSSAN Rail Corridor.

SEC. 6. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division

**Commented [TM6]:** RCTC is concerned about potential impacts to regional rail.



**SB 1098**

— 8 —

4 of Title 2 of the Government Code.

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# **AGENDA ITEM 6L**



| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |  |
|---|--|
| <b>DATE:</b>                                      | September 11, 2024   |
| <b>TO:</b>  | Riverside County Transportation Commission   |
| <b>FROM:</b>                                      | Western Riverside County Programs and Projects Committee<br>John Tarascio, Senior Capital Projects Manager               |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director   |
| <b>SUBJECT:</b>                                   | On-Call Constructability Review and Miscellaneous Construction Management Support Services for Non-Rail Capital Projects |

**WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE AND STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Award the following agreements to provide on-call constructability review and miscellaneous construction management support services for non-rail capital 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 \$3,234,000;
  - a) Agreement No. 24-31-068-00 HDR Construction Control Corporation;
  - b) Agreement No. 24-31-124-00 FALCON Engineering Services, Inc.;
  - c) Agreement No. 24-31-125-00 Jacobs Project Management Co.;
  - d) Agreement No. 24-31-126- 00 WSP USA Inc.;
  - e) Agreement No. 24-31-127-00 ANSER Advisory Management, LLC;
- 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.

**BACKGROUND INFORMATION:**

The Commission has identified the need for the provision of comprehensive on-call consulting services for various construction management (CM) tasks related to capital, non-railroad related projects. These services include, but are not limited to, design stage constructability reviews, construction inspection, construction contract administration, office engineering, construction surveys, source inspection, change order/claim management, independent cost estimating, labor compliance, environmental compliance, scheduling, permitting/permit coordination, safety assessment/compliance, utility coordination, drone and crawling camera/video inspections.

This procurement is intended to provide the Commission with selective CM support services on an as-needed basis where full-scale CM services are either not yet required due to the current

stage of the project or not warranted due to the project's scale. This will allow the Commission to have more flexibility in selecting the CM services required to support ongoing projects while allowing for a more streamlined process for procuring these services through individual task orders.

These on-call CM services may support various projects, including new interchanges, existing interchange improvements, trail development, pavement rehabilitation, road resurfacing, highway improvements, transit station/facility improvements and County and/or City road improvements.

## **DISCUSSION**

### **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. Evaluation criteria included elements such as qualifications of firm, staffing and project organization, project understanding and approach, and the ability to respond to the requirements set forth under the terms of a request for qualifications (RFQ).

RFQ No. 24-31-068-00 for on-call constructability review and miscellaneous CM support services for non-rail capital projects was released by staff on April 24, 2024. The RFQ was posted on the Commission's PlanetBids website, which is accessible through the Commission's website. Through PlanetBids, 101 firms downloaded the RFQ, 21 of these firms are located in Riverside County. A pre-submittal conference was held on May 2, 2024, and attended by 15 firms. Staff responded to all questions submitted by potential proposers prior to the May 14, 2024, clarification deadline. Sixteen (16) firms, ABA Global Inc. (Glendora, CA), AECOM Technical Services, Inc. (Orange, CA), Anser Advisory Management, LLC (Irvine, CA), Arcadis U.S., Inc. (Riverside, CA), Baryeh Construction Inc. (Los Angeles, CA), FALCON Engineering Services, Inc. (Temecula, CA), Fountainhead Consulting Corporation (Fontana, CA), HDR Construction Control Corporation (Riverside, CA), Jacobs Project Management Co. (Ontario, CA), Kleinfelder Construction Services, Inc. (Riverside, CA) Pacific Pros Consultants, Inc. (Aliso Viejo, CA), PMCS Group, Inc. (Long Beach, CA), Southstar Engineering & Consulting, Inc. (Riverside, CA), SYRUSA Engineering, Inc. (Brea, CA), T.Y. Lin International (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 May 28, 2024. Utilizing the evaluation criteria set forth in the RFQ, the firms were evaluated and scored by an evaluation committee comprised of Commission and Bechtel staff.

Based on the evaluation committee's assessment of the written proposals and pursuant to the terms of the RFP, the evaluation committee determined two (2) firms – Falcon Engineering Services and HDR Construction Control Corporation – to be the most qualified firms to provide

on-call constructability review and miscellaneous CM support services for non-rail capital projects.

Additionally, since the Commission intended to award up to five (5) agreements for on-call constructability review and miscellaneous CM support services for non-rail capital projects, the evaluation committee shortlisted and invited six (6) firms – AECOM Technical Services, Inc.; Anser Advisory Management, LLC; Arcadis U.S., Inc.; Jacobs Project Management Co.; T.Y. Lin International; and WSP USA Inc. – to the interview phase of the evaluation and selection process. Interviews were conducted on July 16, 2024.


Subsequently, the evaluation committee determined Anser Advisory Management, LLC, Jacobs Project Management Co., and WSP USA Inc. to be the most qualified firms from the interview phase to provide on-call constructability review and miscellaneous CM support services for non-rail capital projects.

As a result of the evaluation committee’s assessment of the written proposals and interviews, the evaluation committee recommends contract awards to Anser Advisory Management, LLC, Falcon Engineering Services, HDR Construction Control Corporation, Jacobs Project Management Co., and WSP USA Inc. for a three-year term, and one, two-year option to extend the agreements, in the aggregate amount of \$3,234,000, as these firms earned the highest total evaluation scores.

The on-call, indefinite delivery/quantity task order type contracts do not guarantee work to any of the awardees; therefore, no funds are guaranteed to any consultant. Services will be provided through the Commission’s issuance of task orders to the consultants on an as-needed basis. Pre-qualified consultants will be selected for specific tasks based on qualification information contained in their proposals for the specific tasks. To ensure the consultants’ prices are fair and reasonable, the contracts are subject to a pre-award audit.

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.

**FISCAL IMPACT:**

| Financial Information       |  |       |                           |                    |                          |
|-----------------------------|--|-------|---------------------------|--------------------|--------------------------|
| In Fiscal Year Budget:      | Yes  | Year: | FY 2024/25<br>FY 2025/26+ | Amount:            | \$145,000<br>\$3,089,000 |
| Source of Funds:            | Measure A and various local, state and federal sources.                            |       |                           | Budget Adjustment: | No                       |
| GL/Project Accounting No.:  | XXXXXX 81302 00000 0000 / XXX 31 81301 CM  |       |                           |                    |                          |
| Fiscal Procedures Approved: |  |       |                           | Date:              | 08/15/2024               |

Attachments:

- 1) Draft On-Call Professional Services Agreement No. 24-31-068-00 With HDR Construction Control Corporation
- 2) Draft On-Call Professional Services Agreement No. 24-31-124-00 With FALCON Engineering Services, Inc.
- 3) Draft On-Call Professional Services Agreement No. 24-31-125-00 With Jacobs Project Management Co.
- 4) Draft On-Call Professional Services Agreement No. 24-31-126- 00 With WSP USA Inc.
- 5) Draft On-Call Professional Services Agreement No. 24-31-127-00 With ANSER Advisory Management, LLC

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|--|---|----------|---|-----|---|
| <i>Approved by the Western Riverside County Programs and Projects Committee on<br/>August 26, 2024</i> |   |          |   |     |   |
| In Favor:  | 7 | Abstain: | 1 | No: | 0 |



Agreement No. 24-31-068-00

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

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
HDR CONSTRUCTION CONTROL CORPORATION  
FOR ON-CALL**

**CONSTRUCTABILITY REVIEW AND MISCELLANEOUS  
CONSTRUCTION MANAGEMENT SUPPORT SERVICES FOR NON-RAIL CAPITAL  
PROJECTS**

**Parties and Date.**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and **HDR CONSTRUCTION CONTROL CORPORATION** ("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 sources of funding for payment for on-call professional consulting services provided under this Agreement may include:

Local funds pursuant to the following programs: Measure A, Transportation Uniform Mitigation Funds (TUMF) and TUMF Community and Environmental Transportation Acceptability Process (CETAP);

State funds administered by the California Department of Transportation ("Caltrans") pursuant to the following programs: Senate Bill 1 (SB-1), State

Transportation Improvement Program (STIP), Office of State Highway Operations and Protection Program (SHOPP), Local Partnership Program (LPP), Trade Corridor Enhancement Program (TCEP), and Solutions for Congested Corridors Program (SCCP);

Federal funds from Federal Highway Administration (FHWA) and administered by Caltrans pursuant to the following programs: federal earmarks, Surface Transportation Block Grant program (STBG) and Congestion Mitigation & Air Quality (CMAQ) improvement program.

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.

E. Consultant desires to perform and assume responsibility for the provision of certain on-call construction management services for the construction of non-rail capital improvement projects in the County of Riverside, California. Services shall be provided 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.

F. 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 construction management 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 fully executed 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 the Schedule of Services set forth in a Task Order. 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.

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 the Commission will consider approval of this Agreement. 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 23 and 24 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 Consultant shall commence work after notification to proceed by Commission's Contract Administrator. This Agreement shall end on September 30, 2027 unless extended by contract amendment. The Commission may extend the term of this Agreement, in its sole discretion, for one additional two (2) year period.

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 **Jon Rohrer, 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: **Jon Rohrer, Len Beystum, Carter Cox, Irfan Patel, Clay Walker, J. Fabian Velasco Diaz, Ahn Case, Ali Iqbal, and Manny Yogarajah** or as otherwise identified in the Task Order.

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. 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. 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 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.

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. 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, 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. 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 "B" and incorporated herein by reference, or any cost proposal included as part of a Task Order ("Cost Proposal") unless additional reimbursement is provided for by 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, this Agreement or any Task Order is required, the Agreement time or actual costs reimbursable by Commission shall be adjusted by written amendment to accommodate the changed work. The maximum total cost as specified in Section 19.10 shall not be exceeded, unless authorized by a written amendment.

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 to be set forth in each Task Order ("Fixed Fee"). The Fixed Fee is nonadjustable for each Task Order, 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 California Department of Human Resources (CalHR) rules, unless otherwise authorized by Commission. If the rates invoiced are in excess of those authorized CalHR 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 for a Task Order, 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 the Fixed Fee shall be included in the monthly progress payments. 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.

19.7 No payment shall be made prior to approval of any Services, nor for any Services performed prior to approval of this Agreement.

19.8 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

19.9 The total amount payable by Commission, including the Fixed Fee, shall not exceed the amount set forth in each Task Order.

19.10 Commission has or will enter into Five (5) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("Construction Management Services Task Order Contracts"). The other Construction Management Services Task Order Contracts are Falcon Engineering Services (24-31-124-00), Jacobs Project Management Co. (24-31-125-00), WSP USA (24-31-126-00), and Anser Advisory Management (24-31-127-00). The total amount payable by Commission for the Construction Management Services Task Order Contracts shall not exceed a cumulative maximum total value of Two Million Nine Hundred Forty Thousand Dollars (\$2,940,000) ("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 Construction Management Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the Construction Management Services Task Order Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the Construction Management Services Task Order

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.

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 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.

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 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.

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 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 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.

21.6 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.

21.7 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.

21.8 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 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, 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.

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 will 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 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.

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 "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.

## 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 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 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.

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 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.

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

## 27. Labor Code Requirements.

### 27.1 Prevailing Wages.

(a) 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) Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Section.

(c) 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>.

(d) 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. Since 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.

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

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, indemnify and hold Commission, 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, 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, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission, 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, 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.

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 \$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.

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.

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 expense.

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.

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.

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.

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.

(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's duties and services under this Agreement shall not include preparing or assisting the Commission with any portion of the Commission's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the Commission. The Commission shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Consultant shall cooperate with the Commission to ensure that all bidders for a subsequent contract on any subsequent phase of this Project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant pursuant to this Agreement.

(e) Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

(f) 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 Agreement 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 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.

37.2. 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.

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.

40. 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:**

HDR Construction Control Corporation  
2280 Market Street, Ste. 100  
Riverside, CA 92501

\_\_\_\_\_  
Attn: Jon Rohrer\_\_\_\_\_

**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.

41. 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.

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

43. 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.

44. 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.

45. 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.

46. 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.

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

48. 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.

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

50. 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.

51. 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.

52. 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.

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

54. 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**

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

|   |  |
|---|--|
| <p><b>RIVERSIDE COUNTY<br/>TRANSPORTATION COMMISSION</b></p> <p>By: _____<br/><b>AARON HAKE</b><br/>Executive Director</p> <p><i>Approved as to Form:</i></p> <p>By: _____<br/>Best, Best &amp; Krieger LLP<br/>General Counsel</p> | <p><b>CONSULTANT<br/>HDR CONSTRUCTION CONTROL<br/>CORPORATION</b></p> <p>By: _____<br/>Signature</p> <p>_____ Name</p> <p>_____ Title</p> <p><b>ATTEST:</b></p> <p>By: _____</p> <p>Its: _____</p> |
|---|--|

\* 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]**

## SCOPE OF WORK

The Riverside County Transportation Commission (the "Commission") intends to contract with an on-call "bench" of qualified Consultants to provide Constructability Reviews and Miscellaneous Construction Management Support Services for Commission's Non-Railroad Capital Infrastructure Projects on an on-call basis pursuant to task orders to be issued in accordance with the terms of this RFQ and the Commission's model agreement. The selected Consultants will supplement the work of the Commission Staff in accordance with the specifications described herein.

This on-call contract is intended to provide the Commission with selective Construction Management (CM) support services on an as-needed basis where full-scale CM services are either; 1) not yet required due to the current stage of the project or 2) not warranted due to the project's scale. These services may include, but are not limited to:

- Design Stage Constructability Reviews
- Construction Inspection Support
- Construction Contract Administration Support
- Office Engineering Support
- Construction Survey Support
- Source Inspection Services
- Change Order/Claim Support
- Independent Cost Estimating Support
- Labor Compliance Support
- Environmental Compliance Support
- Schedule Support
- Permitting/Permit Coordination
- Safety Assessment/Compliance
- Utility Coordination
- Drone and Crawling Camera/Video Inspection Services

Consultants should have the flexibility to provide any multitude of services for a given task order while having the capacity to support multiple task orders at the same time. A Consultant's participation in early CM services related to this on-call contract, such as Constructability Reviews, will not preclude them from participating in a project's future full-scale CM procurement issued by the Commission. Participation in these early CM services also does not guarantee award of a future full CM services contract. Future full CM services will be separately competitively procured, and members of the selection panel will differ than those that will participate in the on-call task order selection process.

Projects for which construction management support services may be required include, new interchange projects, existing interchange improvement projects, trail projects, pavement rehabilitation, road resurfacing projects, highway improvement projects, County and/or City roads improvement and any other non-railroad projects which falls directly under the Commission Capital Project division.

As construction management support needs arise, the Commission will develop a brief scope of work and will issue a request for task order proposals to the bench of contracted firms selected pursuant to this RFQ. Award of task orders will be made to the firm: (i) determined most qualified based on a review of the task order proposals in accordance

with the review criteria to be set forth in the request for task order, and (ii) proposing a reasonable price, as determined by the Commission. If the Commission and the first ranked firm are unable to negotiate a reasonable price for the task order work, negotiations shall commence with the next highest ranked firm, and shall continue until a task order is awarded. For non-State or federally funded task orders, the Commission may include price as a consideration in task order proposal evaluation and award, and/or may issue task orders in accordance with procedures determined to be in the Commission's best interest.

Approval and authorization to proceed for the designated scope of work will be documented in an Agreement Task Order (ATO). The Consultant will be required to commence work within five days or sooner after receiving a fully executed ATO.

Payment for each ATO will be in accordance with the Cost Proposal conditions in the selected Consultant's parent agreement.

These services will be funded using a variety of federal, state, and local funds. The Consultant shall meet all the requirements associated with the specific fund type associate with each ATO and the funding will be identified at the time the scope of work is released.

### **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.

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, 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 core construction management staffing positions, including key personnel positions. Proposer is not required to adhere solely to the suggested list but may propose as they believe warranted for the contract.

- 1) Suggested Core Construction Management Staffing
  - a. Project Manager/ Resident Engineer, Professional Engineer (PE) \*
  - b. Project Controls
  - c. Office Engineer
  - d. Office/Labor Compliance Administrator
  - e. Change Order Engineer
  - f. Assistant Resident Engineer/Lead Inspector PE
  - g. Structure Representative PE \*
  - h. Structure Inspector
  - i. Inspector/Storm Water Inspector QSP, QSD
  - j. Landscape Inspector
  - k. Civil/Roadway/Electric Inspector

\* Denoted as Key Personnel

The following is a non-exhaustive list of construction management support services that may be required over the duration of the agreement.

- 2) Construction Management Support Services (non-exhaustive listing)
  - a. Constructability Review
  - b. Construction Inspection

- c. Construction Contract Administration
- d. Office Engineering
- e. Document Control
- f. Surveys
- g. Source Inspection
- h. Change Order/Claims
- i. Independent Cost Estimating
- j. Labor Compliance
- k. Environmental Compliance
- l. Scheduling
- m. Permitting/Permit Coordination
- n. Safety Assessment/Compliance
- o. Utility Coordination
- p. Drone and Crawling Camera/Video Inspection Services

**OFFERER Personnel for Construction Management Support Services:**

OFFERER shall provide qualified and experienced personnel to oversee and implement all required construction management support services for the project.

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, City, County and/or other Authority's Having Jurisdiction (AHJ) regulations, policies, procedures, manuals, and standards as modified by the Commission's General Conditions and procedures.

If a member of OFFEROR's personnel is on a leave of absence, OFFEROR's project manager/RE will 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.

**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. Construction 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 each Project using the Caltrans Construction Manual as a guideline. OFFEROR shall transmit

certain project records to the Commission using an electronic transfer and collection system. OFFEROR will also maintain a hard copy of project records. (Commission will train OFFEROR in the requirements and use of the system if needed.).

- f. 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.
- g. 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.
- h. OFFEROR shall review and ensure compliance with environmental requirements.
- i. 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.
- j. OFFEROR shall review Contractors' certified payroll records and other labor compliance records and assure the construction Contractor's compliance with Contract requirements.
- k. OFFEROR shall monitor and maintain records to assure that the construction Contractor complies with all provisions of the Storm Water Pollution Prevention Plan (SWPPP).
- l. OFFEROR shall assure that the Project meets all applicable regulations of the Air Quality Management District (AQMD).

#### **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 support staff, project stakeholders, AHJ's, 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 utility 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 lane closure requests and forward to local jurisdictions for approval as necessary.
- l. OFFEROR shall coordinate all Project construction activities with other on-

going projects within and adjacent to the Project limits.

OFFEROR shall review existing highway electrical and traffic systems arrangements with County 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 City and 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. Assessment and 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 County 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**

### **a. Surveys**

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.

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. Drone Services and Crawling Camera/Video Inspection

OFFEROR will provide (as requested):

Drone Services

- 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.

Crawling Camera/Video Inspection Services

- Crawling Camera and/or video inspection services for investigative needs of underground facilities or other inaccessible/restrictive locations.

c. 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.

**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. Independent costs estimates shall be developed as required to justify Contractor costs. 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.
- d. 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.
- e. OFFEROR shall implement a bi-weekly change order meeting with RCTC 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.

**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.
- f. OFFEROR shall prepare and deliver to COMMISSION all project files in hard copy and/or electronic format.
- g. OFFEROR shall assist COMMISSION and Contractor in obtaining final release of all project permits.



**DELIVERABLES.** NOTE: The OFFEROR shall maintain records as described below in the Construction Field Office. In addition, certain records shall be transmitted electronically as the work proceeds to the Commission using SharePoint and/or Laserfiche per the Commissions procedures.

- a. Inspector daily reports, extra work diaries, Landscape Architect, and Resident Engineers' daily diaries.
- b. Monthly Project Activity Summary Reports.
- 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. Project Completion Report.
- g. 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.
- h. Certified payrolls and fringe benefit statements for all employees, OFFEROR and Contractor, who are subject to the State and/or Federal prevailing wage rates.
- i. 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.
- j. 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.

- k. 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 OFFEROR for future reference.

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.

- l. Survey deliverables shall follow the format specified below:

- Horizontal Control
- Alpha numeric hard copy point listing with adjusted California Coordinate System northing and eastings and the appropriate descriptions.
- Vertical Control
- Alpha numeric hard copy benchmark listing with adjusted elevations compatible with the design datum.
- Topography
- Alpha numeric hard copy listing, hard copy 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.

m. 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

n. Other

As specified in the survey request.

**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 Attachment B, 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 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 copies of all Project construction documents including plans, special provisions, reports, designer prepared resident engineer files, and contracts.
- 2) COMMISSION will provide copies of all previously secured permits and Project authorizations.

### **Standards**

All construction inspection, surveys, 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.

For projects that fall under City, County or other Authority's Having Jurisdiction, OFFEROR shall follow applicable standards, specifications (i.e. Greenbook), manuals, policies, procedures and 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 Offerors, 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 Offerors 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 or other AHJ's as applicable.
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"**  
**COMPENSATION AND PAYMENT**

**[attached behind this page]**

**EXHIBIT "C"**  
**COMPENSATION SUMMARY<sup>1</sup>**

| FISCAL YEAR | PROJECT                   | COST                   |
|-------------|---------------------------|------------------------|
| FY 2024/25  | Services                  | \$ 145,000.00          |
| FY 2025/26  | Services                  | 1,200,000.00           |
| FY 2026/27  | Services                  | 1,100,000.00           |
| FY 2027/28  | Services                  | 395,000.00             |
|             | <b>SUBTOTAL</b>           | <b>2,840,000.00</b>    |
|             | <b>OTHER DIRECT COSTS</b> | <b>100,000.00</b>      |
|             | <b>TOTAL COSTS</b>        | <b>\$ 2,940,000.00</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.

**EXHIBIT "C"**  
**CALTRANS/STATE REQUIREMENTS**

**[attached behind this page]**

## EXHIBIT "C"

### CALTRANS/STATE 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. FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, Consultant shall not discriminate against any employee for employment on account 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. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section. Consultant shall include this provision in all subconsultants for Services to be provided under this Agreement.

2. Consultant and all subconconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, 12900 et seq.), and the applicable regulations promulgated thereunder (Cal. Code Regs., Title 2, 11000, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and all subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. Consultant shall, and shall require that its subconsultants, permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by State, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by State, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

4. Remedies for Willful Violation:

(a) State may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which Consultant was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that Consultant has violated the Fair Employment Practices Act.

(b) For willful violation of this Fair Employment Provision, the Commission shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by Commission in securing the goods or services hereunder shall be borne and paid for by Consultant, and Commission may deduct from any moneys due or thereafter may become due to Commission, the difference between the price named in the Agreement and the actual cost to Commission to cure Consultant's breach of this Agreement.

**2. 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.

### **3. PROMPT PAYMENT**

Consultant agrees to pay each subcontractor 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. Sections 6, Prompt Payment, of Exhibit "D" shall also apply.

### **4. RELEASE OF RETAINAGE**

No retainage will be withheld by the Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to Consultant and its subconsultants.

### **5. 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.

### **6. 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.

### **7. INVENTIONS.**

Rights to Inventions and Data Made Under a Contract or Agreement — Consultant shall comply with Federal requirements and regulations pertaining to patent rights with respect

to any discovery or invention which arises or is developed in the course of or under the Contract, and shall be in compliance with 10 CFR 600.325 and Appendix A—Patent and Data Rights to Subpart D, Part 600.

## **8. 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).

C. Energy Policy and Conservation Act (Pub. L. 94—163, 89 Stat. 871.) — Consultant shall comply with 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), which are incorporated by reference in this Contract. (10 CFR 600.236(i)(13).)

## **9. COMPLIANCE WITH ECONOMIC SANCTIONS IN RESPONSE TO RUSSIA'S ACTIONS IN UKRAINE.**

Consultant shall fully and adequately comply with California Executive Order N-6-22 (“Russian Sanctions Program”). As part of this compliance process, Consultant shall also certify compliance with the Russian Sanctions Program by completing the form located in Exhibit “E” (Russian Sanctions Certification), attached hereto and incorporated herein by reference. Consultant shall also require any subconsultants to comply with the Russian Sanctions Program and certify compliance pursuant to this Section.

## **10. ADDITIONAL FUNDING REQUIREMENTS**

The Commission may include, as part of any Task Order proposal request, additional State funding requirements applicable to the funding to be used for the relevant Task Order. Any such additional requirements shall be considered incorporated into this Agreement by reference as if fully set forth herein, and shall apply to all Services performed under the relevant Task Order.

**EXHIBIT "D"**

**FEDERAL DEPARTMENT OF TRANSPORTATION  
FHWA AND CALTRANS REQUIREMENTS**

**[attached behind this page]**



## 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 on 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. 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 Caltrans 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 22%. The goal for each Task Order, if different than the overall goal for the Agreement, may be set forth in the relevant Task Order. Participation by DBE Consultant or subconsultants shall be in accordance with information contained in Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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).

C. Energy Policy and Conservation Act (Pub. L. 94—163, 89 Stat. 871.) — Consultant shall comply with 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), which are incorporated by reference in this Contract. (10 CFR 600.236(i)(13).)

## **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"**

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

**[attached behind this page]**

**DRAFT**

## 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: \_\_\_\_\_

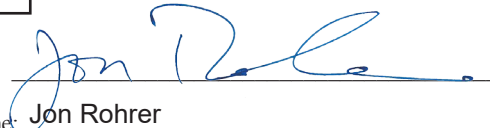
**EXHIBIT "F"**  
**LOBBYING ACTIVITIES DISCLOSURE**

**[attached behind this page]**

# Not Applicable to HDR Construction Control Corporation

## EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

|  |  |   |
|--|--|---|
| <b>1. Type of Federal Action:</b><br><input type="checkbox"/> a. contract<br><input type="checkbox"/> b. grant<br><input type="checkbox"/> c. cooperative agreement<br><input type="checkbox"/> d. loan<br><input type="checkbox"/> e. loan guarantee<br><input type="checkbox"/> f. loan insurance  | <b>2. Status of Federal Action:</b><br><input type="checkbox"/> a. bid/offer/application<br><input type="checkbox"/> b. initial award<br><input type="checkbox"/> c. post-award  | <b>3. Report Type:</b><br><input type="checkbox"/> a. initial<br><input type="checkbox"/> b. material change<br><br><b>For Material Change Only:</b><br>year _____ quarter _____<br>date of last report _____ |
| <b>4. Name and Address of Reporting Entity</b><br><br><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee<br>Tier _____, if known<br><br>Congressional District, if known   | <b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b><br><br>Congressional District, if known   |   |
| <b>6. Federal Department/Agency:</b>   | <b>7. Federal Program Name/Description:</b><br><br>CFDA Number, if applicable _____  |   |
| <b>8. Federal Action Number, if known:</b>   | <b>9. Award Amount, if known:</b>  |   |
| <b>10. Name and Address of Lobby Entity</b><br>(If individual, last name, first name, MI)  | <b>11. Individuals Performing Services</b><br>(including address if different from No. 10)<br>(last name, first name, MI)  |   |
| (attach Continuation Sheet(s) if necessary)  |  |   |
| <b>12. Amount of Payment (check all that apply)</b><br>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned   | <b>14. Type of Payment (check all that apply)</b><br><input checked="" type="checkbox"/> a. retainer<br><input type="checkbox"/> b. one-time fee<br><input type="checkbox"/> c. commission<br><input type="checkbox"/> d. contingent fee<br><input type="checkbox"/> e. deferred<br><input type="checkbox"/> f. other, specify _____ |   |
| <b>13. Form of Payment (check all that apply):</b><br><input checked="" type="checkbox"/> a. cash<br><input type="checkbox"/> b. in-kind; specify: nature _____<br>Value _____   |  |   |
| <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 12:</b><br><br>(attach Continuation Sheet(s) if necessary)  |  |   |
| <b>16. Continuation Sheet(s) attached:</b> Yes <input type="checkbox"/> No <input type="checkbox"/>  |  |   |
| <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> | Signature: <br>Print Name: <u>Jon Rohrer</u><br>Title: <u>Vice President</u><br>Telephone No.: <u>949.929.4861</u> Date: <u>05/28/24</u>   |   |
| Authorized for Local Reproduction<br>Standard Form - LLL   |  |   |

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

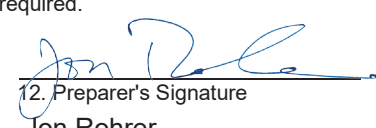
**EXHIBIT "G"**

**DBE COMMITMENT FORM**

**[attached behind this page]**

## EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: Riverside County Transportation Commission    2. Contract DBE Goal: 22%
3. Project Description: On-Call Constructability Review and Miscellaneous Construction Management Support Services for Non-Rail Capital Projects
4. Project Location: Riverside County, CA
5. Consultant's Name: HDR Construction Control Corporation    6. Prime Certified DBE:

| 7. Description of Work, Service, or Materials Supplied   | 8. DBE Certification Number | 9. DBE Contact Information  | 10. DBE %     |
|--|-----------------------------|---|---------------|
| Structures Representative; Roadway/Civil/Structural Inspectors; Safety Coordinator   | 50515                       | AIX Consulting, Inc.   Robert Delgado   626.734.7447   235 E. Broadway, Suite 960, Long Beach, CA 90802   | 4%            |
| Survey Chief; Licensed Surveyor  | 38284                       | CL Surveying and Mapping, Inc.   Robert Vasquez, PLS   909.484.4200   400 E. Rincon St., Suite 202, Corona, CA 92879  | 2%            |
| Resident Engineer/Project Manager; Roadway/Civil/Structural/Electrical/Stormwater Inspectors; Office Engineer/Document Control; Labor Compliance Specialist  | 39638                       | Dynamic Engineering Services, Inc.   Chia-Chi Wang, PE   951.471.8890   6 Latitude Way, Suite 112, Corona, CA 92881   | 2.5%          |
| Resident Engineer/Project Manager; Structures Representative; Roadway/Civil/Structural Inspectors; Labor Compliance Specialist; Cost Estimator   | 50810                       | Enterris & Associates, Inc.   Anh Case, PE   714.423.8171   6060 Center Dr., 10th Floor   Los Angeles, CA 90045   | 3%            |
| Resident Engineer/Project Manager; Roadway/Civil/Structural Inspectors; Scheduler; CCOs/Claims Specialist; Constructability Reviewer   | 51471                       | Fulcrum Consultants, Inc.   Ali Iqbal   714.294.8152   One Park Plaza, Suite 600   Irvine, CA 92614   | 5%            |
| Resident Engineer/Project Manager; Roadway/Civil/Structural/Electrical/Landscape Inspectors; Office Engineer/Document Control; Labor Compliance Specialist; Scheduler; CCOs/Claims Specialist; Constructability Reviewer   | 40430                       | RT Engineering & Associates, Inc.   Regina Talamantez, PE   909.855.1807   201 E. Airport Drive, Suite 140, San Bernardino, CA 92408  | 3%            |
| Resident Engineer/Project Manager; Roadway/Civil/Structural/Electrical Inspectors; Office Engineer/Document Control; Specialty Source Inspection   | 30866                       | S2 Engineering, Inc.   Sagar Pandey   909.373.8240   8608 Utica Ave., Suite 100, Rancho Cucamonga, CA 91730   | 3%            |
| <b>Local Agency to Complete this Section</b>   |                             | <b>11. TOTAL CLAIMED DBE PARTICIPATION</b>  | <b>22.5 %</b> |
| 17. Local Agency Contract Number: _____<br>18. Federal-Aid Project Number: _____<br>19. Proposed Contract Execution Date: _____<br><br>Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.<br><br>_____<br>20. Local Agency Representative's Signature      21. Date<br><br>_____<br>22. Local Agency Representative's Name      23. Phone<br><br>_____<br>24. Local Agency Representative's Title |                             |   |               |
|  |                             | <b>IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.</b><br><br><div style="display: flex; justify-content: space-between;"> <div style="width: 70%;"> <br/>           _____<br/>           12. Preparer's Signature<br/>           Jon Rohrer<br/>           _____<br/>           14. Preparer's Name<br/>           Vice President<br/>           _____<br/>           16. Preparer's Title         </div> <div style="width: 25%;">           _____<br/>           13. Date<br/>           May 28, 2024<br/>           _____<br/>           15. Phone<br/>           949.929.4861         </div> </div> |               |

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

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



## Agreement No. 24-31-124-00

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

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
FALCON ENGINEERING SERVICES  
FOR ON-CALL**

**CONSTRUCTABILITY REVIEW AND MISCELLANEOUS  
CONSTRUCTION MANAGEMENT SUPPORT SERVICES FOR NON-RAIL CAPITAL  
PROJECTS**

**Parties and Date.**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2024, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and **FALCON ENGINEERING SERVICES** ("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 sources of funding for payment for on-call professional consulting services provided under this Agreement may include:

Local funds pursuant to the following programs: Measure A, Transportation Uniform Mitigation Funds (TUMF) and TUMF Community and Environmental Transportation Acceptability Process (CETAP);

State funds administered by the California Department of Transportation ("Caltrans") pursuant to the following programs: Senate Bill 1 (SB-1), State

Transportation Improvement Program (STIP), Office of State Highway Operations and Protection Program (SHOPP), Local Partnership Program (LPP), Trade Corridor Enhancement Program (TCEP), and Solutions for Congested Corridors Program (SCCP);

Federal funds from Federal Highway Administration (FHWA) and administered by Caltrans pursuant to the following programs: federal earmarks, Surface Transportation Block Grant program (STBG) and Congestion Mitigation & Air Quality (CMAQ) improvement program.

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.

E. Consultant desires to perform and assume responsibility for the provision of certain on-call construction management services for the construction of non-rail capital improvement projects in the County of Riverside, California. Services shall be provided 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.

F. 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 construction management 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 fully executed 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 the Schedule of Services set forth in a Task Order. 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.

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 the Commission will consider approval of this Agreement. 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 23 and 24 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 Consultant shall commence work after notification to proceed by Commission's Contract Administrator. This Agreement shall end on September 30, 2027, unless extended by contract amendment. The Commission may extend the term of this Agreement, in its sole discretion, for one additional two (2) year period.

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 **Wael Faqih, Sr. 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: **Wael Faqih, Kurt Pegg, Ashraf Mohamed, and Tarik Malik**, or as otherwise identified in the Task Order.

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. 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. 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 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.

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. 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, 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. 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 "B" and incorporated herein by reference, or any cost proposal included as part of a Task Order ("Cost Proposal") unless additional reimbursement is provided for by 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, this Agreement or any Task Order is required, the Agreement time or actual costs reimbursable by Commission shall be adjusted by written amendment to accommodate the changed work. The maximum total cost as specified in Section 19.10 shall not be exceeded, unless authorized by a written amendment.

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 to be set forth in each Task Order ("Fixed Fee"). The Fixed Fee is nonadjustable for each Task Order, 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 California Department of Human Resources (CalHR) rules, unless otherwise authorized by Commission. If the rates invoiced are in excess of those authorized CalHR 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 for a Task Order, 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 the Fixed Fee shall be included in the monthly progress payments. 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.

19.7 No payment shall be made prior to approval of any Services, nor for any Services performed prior to approval of this Agreement.

19.8 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

19.9 The total amount payable by Commission, including the Fixed Fee, shall not exceed the amount set forth in each Task Order.

19.10 Commission has or will enter into Five (5) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("Construction Management Services Task Order Contracts"). The other Construction Management Services Task Order Contracts are HDR (24-31-068-00), Jacobs Project Management Co. (24-31-125-00), WSP USA (24-31-126-00), and Anser Advisory Management (24-31-127-00). The total amount payable by Commission for the Construction Management Services Task Order Contracts shall not exceed a cumulative maximum total value of Two Million Nine Hundred Forty Thousand Dollars (\$2,940,000) ("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 Construction Management Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the Construction Management Services Task Order Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the Construction Management Services Task Order 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.

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 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.

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 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.

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 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 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.

21.6 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.

21.7 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.

21.8 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 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, 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.

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 will 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 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.

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 "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.

## 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 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 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.

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 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.

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

## 27. Labor Code Requirements.

### 27.1 Prevailing Wages.

(a) 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) Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Section.

(c) 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>.

(d) 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. Since 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.

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

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, indemnify and hold Commission, 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, 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, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission, 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, 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.

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 \$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.

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.

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 expense.

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.

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.

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.

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.

(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's duties and services under this Agreement shall not include preparing or assisting the Commission with any portion of the Commission's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the Commission. The Commission shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Consultant shall cooperate with the Commission to ensure that all bidders for a subsequent contract on any subsequent phase of this Project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant pursuant to this Agreement.

(e) Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

(f) 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 Agreement 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 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.

37.2. 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.

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.

40. 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:**

Falcon Engineering Services  
41593 Winchester Rd., #120  
Temecula, CA 92590

\_\_\_\_\_  
Attn: Wael Faqih\_\_\_\_\_

**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.

41. 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.

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

43. 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.

44. 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.

45. 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.

46. 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.

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

48. 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.

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

50. 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.

51. 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.

52. 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.

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

54. 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**

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

|   |   |
|---|---|
| <p><b>RIVERSIDE COUNTY<br/>TRANSPORTATION COMMISSION</b></p> <p>By: _____<br/><b>AARON HAKE</b><br/>Executive Director</p> <p><i>Approved as to Form:</i></p> <p>By: _____<br/>Best, Best &amp; Krieger LLP<br/>General Counsel</p> | <p><b>CONSULTANT<br/>FALCON ENGINEERING SERVICES</b></p> <p>By: _____<br/>Signature</p> <p>_____ Name</p> <p>_____ Title</p> <p><b>ATTEST:</b></p> <p>By: _____</p> <p>Its: _____</p> |
|---|---|

\* 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]**

## SCOPE OF WORK

The Riverside County Transportation Commission (the "Commission") intends to contract with an on-call "bench" of qualified Consultants to provide Constructability Reviews and Miscellaneous Construction Management Support Services for Commission's Non-Railroad Capital Infrastructure Projects on an on-call basis pursuant to task orders to be issued in accordance with the terms of this RFQ and the Commission's model agreement. The selected Consultants will supplement the work of the Commission Staff in accordance with the specifications described herein.

This on-call contract is intended to provide the Commission with selective Construction Management (CM) support services on an as-needed basis where full-scale CM services are either; 1) not yet required due to the current stage of the project or 2) not warranted due to the project's scale. These services may include, but are not limited to:

- Design Stage Constructability Reviews
- Construction Inspection Support
- Construction Contract Administration Support
- Office Engineering Support
- Construction Survey Support
- Source Inspection Services
- Change Order/Claim Support
- Independent Cost Estimating Support
- Labor Compliance Support
- Environmental Compliance Support
- Schedule Support
- Permitting/Permit Coordination
- Safety Assessment/Compliance
- Utility Coordination
- Drone and Crawling Camera/Video Inspection Services

Consultants should have the flexibility to provide any multitude of services for a given task order while having the capacity to support multiple task orders at the same time. A Consultant's participation in early CM services related to this on-call contract, such as Constructability Reviews, will not preclude them from participating in a project's future full-scale CM procurement issued by the Commission. Participation in these early CM services also does not guarantee award of a future full CM services contract. Future full CM services will be separately competitively procured, and members of the selection panel will differ than those that will participate in the on-call task order selection process.

Projects for which construction management support services may be required include, new interchange projects, existing interchange improvement projects, trail projects, pavement rehabilitation, road resurfacing projects, highway improvement projects, County and/or City roads improvement and any other non-railroad projects which falls directly under the Commission Capital Project division.

As construction management support needs arise, the Commission will develop a brief scope of work and will issue a request for task order proposals to the bench of contracted firms selected pursuant to this RFQ. Award of task orders will be made to the firm: (i) determined most qualified based on a review of the task order proposals in accordance



with the review criteria to be set forth in the request for task order, and (ii) proposing a reasonable price, as determined by the Commission. If the Commission and the first ranked firm are unable to negotiate a reasonable price for the task order work, negotiations shall commence with the next highest ranked firm, and shall continue until a task order is awarded. For non-State or federally funded task orders, the Commission may include price as a consideration in task order proposal evaluation and award, and/or may issue task orders in accordance with procedures determined to be in the Commission's best interest.

Approval and authorization to proceed for the designated scope of work will be documented in an Agreement Task Order (ATO). The Consultant will be required to commence work within five days or sooner after receiving a fully executed ATO.

Payment for each ATO will be in accordance with the Cost Proposal conditions in the selected Consultant's parent agreement.

These services will be funded using a variety of federal, state, and local funds. The Consultant shall meet all the requirements associated with the specific fund type associate with each ATO and the funding will be identified at the time the scope of work is released.

### **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.

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, 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 core construction management staffing positions, including key personnel positions. Proposer is not required to adhere solely to the suggested list but may propose as they believe warranted for the contract.

- 1) Suggested Core Construction Management Staffing
  - a. Project Manager/ Resident Engineer, Professional Engineer (PE) \*
  - b. Project Controls
  - c. Office Engineer
  - d. Office/Labor Compliance Administrator
  - e. Change Order Engineer
  - f. Assistant Resident Engineer/Lead Inspector PE
  - g. Structure Representative PE \*
  - h. Structure Inspector
  - i. Inspector/Storm Water Inspector QSP, QSD
  - j. Landscape Inspector
  - k. Civil/Roadway/Electric Inspector

\* Denoted as Key Personnel

The following is a non-exhaustive list of construction management support services that may be required over the duration of the agreement.

- 2) Construction Management Support Services (non-exhaustive listing)
  - a. Constructability Review
  - b. Construction Inspection

- c. Construction Contract Administration
- d. Office Engineering
- e. Document Control
- f. Surveys
- g. Source Inspection
- h. Change Order/Claims
- i. Independent Cost Estimating
- j. Labor Compliance
- k. Environmental Compliance
- l. Scheduling
- m. Permitting/Permit Coordination
- n. Safety Assessment/Compliance
- o. Utility Coordination
- p. Drone and Crawling Camera/Video Inspection Services

**OFFERER Personnel for Construction Management Support Services:**

OFFERER shall provide qualified and experienced personnel to oversee and implement all required construction management support services for the project.

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, City, County and/or other Authority's Having Jurisdiction (AHJ) regulations, policies, procedures, manuals, and standards as modified by the Commission's General Conditions and procedures.

If a member of OFFEROR's personnel is on a leave of absence, OFFEROR's project manager/RE will 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.

**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. Construction 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 each Project using the Caltrans Construction Manual as a guideline. OFFEROR shall transmit

certain project records to the Commission using an electronic transfer and collection system. OFFEROR will also maintain a hard copy of project records. (Commission will train OFFEROR in the requirements and use of the system if needed.).

- f. 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.
- g. 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.
- h. OFFEROR shall review and ensure compliance with environmental requirements.
- i. 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.
- j. OFFEROR shall review Contractors' certified payroll records and other labor compliance records and assure the construction Contractor's compliance with Contract requirements.
- k. OFFEROR shall monitor and maintain records to assure that the construction Contractor complies with all provisions of the Storm Water Pollution Prevention Plan (SWPPP).
- l. OFFEROR shall assure that the Project meets all applicable regulations of the Air Quality Management District (AQMD).

**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 support staff, project stakeholders, AHJ's, 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 utility 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 lane closure requests and forward to local jurisdictions for approval as necessary.
- l. OFFEROR shall coordinate all Project construction activities with other on-

going projects within and adjacent to the Project limits.

OFFEROR shall review existing highway electrical and traffic systems arrangements with County 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 City and 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. Assessment and 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 County 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**

### **a. Surveys**

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.

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. Drone Services and Crawling Camera/Video Inspection

OFFEROR will provide (as requested):

Drone Services

- 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.

Crawling Camera/Video Inspection Services

- Crawling Camera and/or video inspection services for investigative needs of underground facilities or other inaccessible/restrictive locations.

c. 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.

**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. Independent costs estimates shall be developed as required to justify Contractor costs. 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.
- d. 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.
- e. OFFEROR shall implement a bi-weekly change order meeting with RCTC 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.

**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.
- f. OFFEROR shall prepare and deliver to COMMISSION all project files in hard copy and/or electronic format.
- g. OFFEROR shall assist COMMISSION and Contractor in obtaining final release of all project permits.

**DELIVERABLES.** NOTE: The OFFEROR shall maintain records as described below in the Construction Field Office. In addition, certain records shall be transmitted electronically as the work proceeds to the Commission using SharePoint and/or Laserfiche per the Commissions procedures.

- a. Inspector daily reports, extra work diaries, Landscape Architect, and Resident Engineers' daily diaries.
- b. Monthly Project Activity Summary Reports.
- 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. Project Completion Report.
- g. 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.
- h. Certified payrolls and fringe benefit statements for all employees, OFFEROR and Contractor, who are subject to the State and/or Federal prevailing wage rates.
- i. 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.
- j. 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.

- k. 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 OFFEROR for future reference.

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.

- l. Survey deliverables shall follow the format specified below:
  - Horizontal Control
  - Alpha numeric hard copy point listing with adjusted California Coordinate System northing and eastings and the appropriate descriptions.
  - Vertical Control
  - Alpha numeric hard copy benchmark listing with adjusted elevations compatible with the design datum.
  - Topography
  - Alpha numeric hard copy listing, hard copy 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.

m. 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

n. Other

As specified in the survey request.

**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 Attachment B, 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 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 copies of all Project construction documents including plans, special provisions, reports, designer prepared resident engineer files, and contracts.
- 2) COMMISSION will provide copies of all previously secured permits and Project authorizations.

### **Standards**

All construction inspection, surveys, 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.

For projects that fall under City, County or other Authority's Having Jurisdiction, OFFEROR shall follow applicable standards, specifications (i.e. Greenbook), manuals, policies, procedures and 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 Offerors, 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 Offerors 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 or other AHJ's as applicable.
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"**  
**COMPENSATION AND PAYMENT**

**[attached behind this page]**

**EXHIBIT "C"**  
**COMPENSATION SUMMARY<sup>1</sup>**

| FISCAL YEAR               | PROJECT  | COST                   |
|---------------------------|----------|------------------------|
| FY 2024/25                | Services | \$ 145,000.00          |
| FY 2025/26                | Services | 1,200,000.00           |
| FY 2026/27                | Services | 1,100,000.00           |
| FY 2027/28                | Services | 395,000.00             |
| <b>SUBTOTAL</b>           |          | <b>2,840,000.00</b>    |
| <b>OTHER DIRECT COSTS</b> |          | <b>100,000.00</b>      |
| <b>TOTAL COSTS</b>        |          | <b>\$ 2,940,000.00</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.



**EXHIBIT "C"**  
**CALTRANS/STATE REQUIREMENTS**

**[attached behind this page]**

## EXHIBIT "C"

### CALTRANS/STATE 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. FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, Consultant shall not discriminate against any employee for employment on account 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. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section. Consultant shall include this provision in all subconsultants for Services to be provided under this Agreement.

2. Consultant and all subconconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, 12900 et seq.), and the applicable regulations promulgated thereunder (Cal. Code Regs., Title 2, 11000, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and all subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. Consultant shall, and shall require that its subconsultants, permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by State, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by State, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

4. Remedies for Willful Violation:

(a) State may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which Consultant was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that Consultant has violated the Fair Employment Practices Act.

(b) For willful violation of this Fair Employment Provision, the Commission shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by Commission in securing the goods or services hereunder shall be borne and paid for by Consultant, and Commission may deduct from any moneys due or thereafter may become due to Commission, the difference between the price named in the Agreement and the actual cost to Commission to cure Consultant's breach of this Agreement.

**2. 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.

### **3. PROMPT PAYMENT**

Consultant agrees to pay each subcontractor 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. Sections 6, Prompt Payment, of Exhibit "D" shall also apply.

### **4. RELEASE OF RETAINAGE**

No retainage will be withheld by the Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to Consultant and its subconsultants.

### **5. 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.

### **6. 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.

### **7. INVENTIONS.**

Rights to Inventions and Data Made Under a Contract or Agreement — Consultant shall comply with Federal requirements and regulations pertaining to patent rights with respect

to any discovery or invention which arises or is developed in the course of or under the Contract, and shall be in compliance with 10 CFR 600.325 and Appendix A—Patent and Data Rights to Subpart D, Part 600.

## **8. 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).

C. Energy Policy and Conservation Act (Pub. L. 94—163, 89 Stat. 871.) — Consultant shall comply with 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), which are incorporated by reference in this Contract. (10 CFR 600.236(i)(13).)

## **9. COMPLIANCE WITH ECONOMIC SANCTIONS IN RESPONSE TO RUSSIA'S ACTIONS IN UKRAINE.**

Consultant shall fully and adequately comply with California Executive Order N-6-22 (“Russian Sanctions Program”). As part of this compliance process, Consultant shall also certify compliance with the Russian Sanctions Program by completing the form located in Exhibit “E” (Russian Sanctions Certification), attached hereto and incorporated herein by reference. Consultant shall also require any subconsultants to comply with the Russian Sanctions Program and certify compliance pursuant to this Section.

## **10. ADDITIONAL FUNDING REQUIREMENTS**

The Commission may include, as part of any Task Order proposal request, additional State funding requirements applicable to the funding to be used for the relevant Task Order. Any such additional requirements shall be considered incorporated into this Agreement by reference as if fully set forth herein, and shall apply to all Services performed under the relevant Task Order.

**EXHIBIT "D"**

**FEDERAL DEPARTMENT OF TRANSPORTATION  
FHWA AND CALTRANS REQUIREMENTS**

**[attached behind this page]**

## 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 on 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. 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 Caltrans 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 22%. The goal for each Task Order, if different than the overall goal for the Agreement, may be set forth in the relevant Task Order. Participation by DBE Consultant or subconsultants shall be in accordance with information contained in Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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).

C. Energy Policy and Conservation Act (Pub. L. 94—163, 89 Stat. 871.) — Consultant shall comply with 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), which are incorporated by reference in this Contract. (10 CFR 600.236(i)(13).)

## **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"**

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

**[attached behind this page]**

**DRAFT**

## 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: \_\_\_\_\_


**EXHIBIT "F"**  
**LOBBYING ACTIVITIES DISCLOSURE**

**[attached behind this page]**



EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

|   |   |  |
|---|---|--|
| <p><b>1. Type of Federal Action:</b></p> <input type="checkbox"/> a. contract<br><input type="checkbox"/> b. grant<br><input type="checkbox"/> c. cooperative agreement<br><input type="checkbox"/> d. loan<br><input type="checkbox"/> e. loan guarantee<br><input type="checkbox"/> f. loan insurance   | <p><b>2. Status of Federal Action:</b></p> <input type="checkbox"/> a. bid/offer/application<br><input type="checkbox"/> b. initial award<br><input type="checkbox"/> c. post-award   | <p><b>3. Report Type:</b></p> <input type="checkbox"/> a. initial<br><input type="checkbox"/> b. material change   |
|   |   | <p><b>For Material Change Only:</b><br/> year _____ quarter _____<br/> date of last report _____</p>   |
| <p><b>4. Name and Address of Reporting Entity</b></p> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee<br>Tier _____, if known  | <p><b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b></p>   |  |
|   |   | <p>Congressional District, if known</p>  |
| <p><b>6. Federal Department/Agency:</b></p>   | <p><b>7. Federal Program Name/Description:</b></p>  |  |
|   |   | <p>CFDA Number, if applicable _____</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><br/>(If individual, last name, first name, MI)</p>   | <p><b>11. Individuals Performing Services</b><br/>(including address if different from No. 10)<br/>(last name, first name, MI)</p>  |  |
| <p>(attach Continuation Sheet(s) if necessary)</p>  |   |  |
| <p><b>12. Amount of Payment (check all that apply)</b></p> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned  | <p><b>14. Type of Payment (check all that apply)</b></p> <input type="checkbox"/> a. retainer<br><input type="checkbox"/> b. one-time fee<br><input type="checkbox"/> c. commission<br><input type="checkbox"/> d. contingent fee<br><input type="checkbox"/> e. deferred<br><input type="checkbox"/> f. other, specify _____ |  |
| <p><b>13. Form of Payment (check all that apply):</b></p> <input type="checkbox"/> a. cash<br><input type="checkbox"/> b. in-kind; specify: nature _____<br>Value _____   |   |  |
| <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 12:</b></p> <p>(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: <u>Maha Faqih</u></p> <p>Title: <u>President</u></p> <p>Telephone No.: <u>952.549.9600</u>                      Date: <u>5/28/2024</u></p> |
| <p>Authorized for Local Reproduction<br/>Standard Form - LLL</p>  |   |  |
| <p><b>Federal Use Only:</b></p>   |   |  |

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

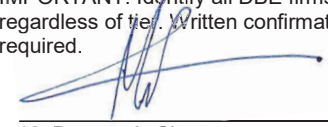
**EXHIBIT "G"**

**DBE COMMITMENT FORM**

**[attached behind this page]**

**EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT**

1. Local Agency: Riverside County Transportation Commission 2. Contract DBE Goal: 22%  
 3. Project Description: ON-CALL CONSTRUCTABILITY REVIEW AND MISCELLANEOUS CONSTRUCTION MANAGEMENT SUPPORT SERVICES FOR NON-RAIL CAPITAL PROJECTS  
RFQ NO. 24-31-068-00  
 4. Project Location: Riverside County  
 5. Consultant's Name: FALCON Engineering Services, Inc. 6. Prime Certified DBE:

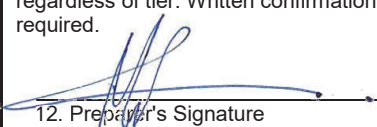
| 7. Description of Work, Service, or Materials Supplied   | 8. DBE Certification Number | 9. DBE Contact Information   | 10. DBE %                |
|--|-----------------------------|--|--------------------------|
| Construction Survey  | 38284                       | CL Surveying<br>400 E. Rincon St. #202, Corona, CA 92879<br>909-484-4200   | 2%                       |
| Schedule Support   | 50602                       | CMC Project Solutions<br>1820 W. Orangewood Ave. #104, Orange, CA 92868<br>877-778-2337  | 1%                       |
| Construction Survey  | 2128                        | Coast Surveying<br>15031 Parkway Loop , Suite B, Tustin, CA 92780<br>714-918-6266  | 2%                       |
| Construction Management Services   | 50810                       | Enterris Associates, Inc.<br>6060 Center Dr, 10th Flr, Los Angeles, CA 90045<br>714-432-8171   | 1%                       |
| Landscape Inspection   | 37320                       | Francis Consulting<br>9312 Tritt Cr., Villa Park, CA 92861<br>714-401-0137   | 1%                       |
| Construction Inspection  | 38771                       | La Salle Solutions, LLC<br>2600 Michelson Dr. #1700, Irvine, CA 92612<br>949-852-3636  | 2%                       |
| Environmental Services   | 51835                       | Laila Imbasher, President<br>12807 Tarragon Way, Riverside, CA 92503<br>949-316-8184   | 2%                       |
| <b>Local Agency to Complete this Section</b>   |                             | <b>11. TOTAL CLAIMED DBE PARTICIPATION</b>   | Continued on next page % |
| 17. Local Agency Contract Number: _____<br>18. Federal-Aid Project Number: _____<br>19. Proposed Contract Execution Date: _____<br><br>Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.<br><br>_____<br>20. Local Agency Representative's Signature      21. Date<br><br>_____<br>22. Local Agency Representative's Name      23. Phone<br><br>_____<br>24. Local Agency Representative's Title |                             |  |                          |
|  |                             | IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.<br><br><br>_____<br>12. Preparer's Signature      13. Date<br>May 28, 2024<br>_____<br>14. Preparer's Name      15. Phone<br>Maha Faqih      951-549-9600<br>_____<br>16. Preparer's Title<br>President |                          |

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

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

**EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT**

1. Local Agency: Riverside County Transportation Commission 2. Contract DBE Goal: 22%  
 3. Project Description: ON-CALL CONSTRUCTABILITY REVIEW AND MISCELLANEOUS CONSTRUCTION MANAGEMENT SUPPORT SERVICES FOR NON-RAIL CAPITAL PROJECTS  
RFQ NO. 24-31-068-00  
 4. Project Location: Riverside County  
 5. Consultant's Name: FALCON Engineering Services, Inc. 6. Prime Certified DBE:

| 7. Description of Work, Service, or Materials Supplied  | 8. DBE Certification Number | 9. DBE Contact Information   | 10. DBE %                |
|---|-----------------------------|--|--------------------------|
| Utility Coordination  | 47426                       | Red Team Go<br>18628 Broadway, Snohomish, WA 98296<br>206.947.1992   | 2%                       |
| Constructability Review   | 52129                       | R2S Consulting<br>1841 Willow Bluff Dr, Corona, CA 92883<br>951.237.6516   | 2%                       |
| Construction Inspection   | 50918                       | Skyline Consultants<br>2999 Crestview Dr., Norco, CA 92860<br>951-316-6408   | 7%                       |
|   |                             |  |                          |
|   |                             |  |                          |
|   |                             |  |                          |
|   |                             |  |                          |
| <b>Local Agency to Complete this Section</b>  |                             |  |                          |
| 17. Local Agency Contract Number: _____   |                             | <b>11. TOTAL CLAIMED DBE PARTICIPATION</b>   | <b>22 %</b>              |
| 18. Federal-Aid Project Number: _____   |                             |  |                          |
| 19. Proposed Contract Execution Date: _____   |                             |  |                          |
| Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. |                             | IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. |                          |
| 20. Local Agency Representative's Signature _____   | 21. Date _____              | <br>12. Preparer's Signature                     | May 28, 2024<br>13. Date |
| 22. Local Agency Representative's Name _____  | 23. Phone _____             | Maha Faqih   | 951-549-9600             |
| 24. Local Agency Representative's Title _____   |                             | 14. Preparer's Name<br>President   | 15. Phone                |
|   |                             | 16. Preparer's Title   |                          |

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

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Agreement No. 24-31-125-00

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

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
JACOBS PROJECT MANAGEMENT CO.  
FOR ON-CALL**

**CONSTRUCTABILITY REVIEW AND MISCELLANEOUS  
CONSTRUCTION MANAGEMENT SUPPORT SERVICES FOR NON-RAIL CAPITAL  
PROJECTS**

**Parties and Date.**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and Jacobs Project Management Co. ("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 sources of funding for payment for on-call professional consulting services provided under this Agreement may include:

Local funds pursuant to the following programs: Measure A, Transportation Uniform Mitigation Funds (TUMF) and TUMF Community and Environmental Transportation Acceptability Process (CETAP);

State funds administered by the California Department of Transportation ("Caltrans") pursuant to the following programs: Senate Bill 1 (SB-1), State

Transportation Improvement Program (STIP), Office of State Highway Operations and Protection Program (SHOPP), Local Partnership Program (LPP), Trade Corridor Enhancement Program (TCEP), and Solutions for Congested Corridors Program (SCCP);

Federal funds from Federal Highway Administration (FHWA) and administered by Caltrans pursuant to the following programs: federal earmarks, Surface Transportation Block Grant program (STBG) and Congestion Mitigation & Air Quality (CMAQ) improvement program.

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.

E. Consultant desires to perform and assume responsibility for the provision of certain on-call construction management services for the construction of non-rail capital improvement projects in the County of Riverside, California. Services shall be provided 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.

F. 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 construction management 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 fully executed 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 the Schedule of Services set forth in a Task Order. 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.

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 the Commission will consider approval of this Agreement. 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 23 and 24 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 Consultant shall commence work after notification to proceed by Commission's Contract Administrator. This Agreement shall end on September 30, 2027, unless extended by contract amendment. The Commission may extend the term of this Agreement, in its sole discretion, for one additional two (2) year period.

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 **Issam Khalaf, 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: **Gary Tomasetti and Alex Angha**, or as otherwise identified in the Task Order.

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. 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. 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 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.

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. 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, 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. 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 "B" and incorporated herein by reference, or any cost proposal included as part of a Task Order ("Cost Proposal") unless additional reimbursement is provided for by 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, this Agreement or any Task Order is required, the Agreement time or actual costs reimbursable by Commission shall be adjusted by written amendment to accommodate the changed work. The maximum total cost as specified in Section 19.10 shall not be exceeded, unless authorized by a written amendment.

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 to be set forth in each Task Order ("Fixed Fee"). The Fixed Fee is nonadjustable for each Task Order, 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 California Department of Human Resources (CalHR) rules, unless otherwise authorized by Commission. If the rates invoiced are in excess of those authorized CalHR 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 for a Task Order, 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 the Fixed Fee shall be included in the monthly progress payments. 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.

19.7 No payment shall be made prior to approval of any Services, nor for any Services performed prior to approval of this Agreement.

19.8 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

19.9 The total amount payable by Commission, including the Fixed Fee, shall not exceed the amount set forth in each Task Order.

19.10 Commission has or will enter into Five (5) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("Construction Management Services Task Order Contracts"). The other Construction Management Services Task Order Contracts are HDR (24-31-068-00), Falcon Engineering Services (24-31-124-00), WSP USA (24-31-126-00), and Anser Advisory Management (24-31-127-00). The total amount payable by Commission for the Construction Management Services Task Order Contracts shall not exceed a cumulative maximum total value of Two Million Nine Hundred Forty Thousand Dollars (\$2,940,000) ("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 Construction Management Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the Construction Management Services Task Order Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the Construction Management Services Task Order 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.

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 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.

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 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.

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 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 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.

21.6 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.

21.7 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.

21.8 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 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, 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.

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 will 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 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.

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 "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.

## 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 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 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.

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 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.

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

## 27. Labor Code Requirements.

### 27.1 Prevailing Wages.

(a) 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) Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Section.

(c) 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>.

(d) 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. Since 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.

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

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, indemnify and hold Commission, 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, 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, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission, 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, 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.

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 \$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.

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.

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 expense.

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.

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.

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.

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.

(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's duties and services under this Agreement shall not include preparing or assisting the Commission with any portion of the Commission's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the Commission. The Commission shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Consultant shall cooperate with the Commission to ensure that all bidders for a subsequent contract on any subsequent phase of this Project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant pursuant to this Agreement.

(e) Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

(f) 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 Agreement 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 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.

37.2. 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.

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.

40. 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 Co.  
3257 E. Guasti Rd., Ste. 120  
Ontario, CA 91761

\_\_\_\_\_  
Attn: Issam Khalaf\_\_\_\_\_

**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.

41. 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.

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

43. 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.

44. 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.

45. 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.

46. 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.

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

48. 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.

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

50. 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.

51. 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.

52. 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.

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

54. 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**

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

|   |  |
|---|--|
| <p><b>RIVERSIDE COUNTY<br/>TRANSPORTATION COMMISSION</b></p> <p>By: _____<br/><b>AARON HAKE</b><br/>Executive Director</p> <p><i>Approved as to Form:</i></p> <p>By: _____<br/>Best, Best &amp; Krieger LLP<br/>General Counsel</p> | <p><b>CONSULTANT<br/>JACOBS PROJECT MANAGEMENT CO</b></p> <p>By: _____<br/>Signature</p> <p>_____ Name</p> <p>_____ Title</p> <p><b>ATTEST:</b></p> <p>By: _____</p> <p>Its: _____</p> |
|---|--|

\* 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]**

## SCOPE OF WORK

The Riverside County Transportation Commission (the "Commission") intends to contract with an on-call "bench" of qualified Consultants to provide Constructability Reviews and Miscellaneous Construction Management Support Services for Commission's Non-Railroad Capital Infrastructure Projects on an on-call basis pursuant to task orders to be issued in accordance with the terms of this RFQ and the Commission's model agreement. The selected Consultants will supplement the work of the Commission Staff in accordance with the specifications described herein.

This on-call contract is intended to provide the Commission with selective Construction Management (CM) support services on an as-needed basis where full-scale CM services are either; 1) not yet required due to the current stage of the project or 2) not warranted due to the project's scale. These services may include, but are not limited to:

- Design Stage Constructability Reviews
- Construction Inspection Support
- Construction Contract Administration Support
- Office Engineering Support
- Construction Survey Support
- Source Inspection Services
- Change Order/Claim Support
- Independent Cost Estimating Support
- Labor Compliance Support
- Environmental Compliance Support
- Schedule Support
- Permitting/Permit Coordination
- Safety Assessment/Compliance
- Utility Coordination
- Drone and Crawling Camera/Video Inspection Services

Consultants should have the flexibility to provide any multitude of services for a given task order while having the capacity to support multiple task orders at the same time. A Consultant's participation in early CM services related to this on-call contract, such as Constructability Reviews, will not preclude them from participating in a project's future full-scale CM procurement issued by the Commission. Participation in these early CM services also does not guarantee award of a future full CM services contract. Future full CM services will be separately competitively procured, and members of the selection panel will differ than those that will participate in the on-call task order selection process.

Projects for which construction management support services may be required include, new interchange projects, existing interchange improvement projects, trail projects, pavement rehabilitation, road resurfacing projects, highway improvement projects, County and/or City roads improvement and any other non-railroad projects which falls directly under the Commission Capital Project division.

As construction management support needs arise, the Commission will develop a brief scope of work and will issue a request for task order proposals to the bench of contracted firms selected pursuant to this RFQ. Award of task orders will be made to the firm: (i) determined most qualified based on a review of the task order proposals in accordance

with the review criteria to be set forth in the request for task order, and (ii) proposing a reasonable price, as determined by the Commission. If the Commission and the first ranked firm are unable to negotiate a reasonable price for the task order work, negotiations shall commence with the next highest ranked firm, and shall continue until a task order is awarded. For non-State or federally funded task orders, the Commission may include price as a consideration in task order proposal evaluation and award, and/or may issue task orders in accordance with procedures determined to be in the Commission's best interest.

Approval and authorization to proceed for the designated scope of work will be documented in an Agreement Task Order (ATO). The Consultant will be required to commence work within five days or sooner after receiving a fully executed ATO.

Payment for each ATO will be in accordance with the Cost Proposal conditions in the selected Consultant's parent agreement.

These services will be funded using a variety of federal, state, and local funds. The Consultant shall meet all the requirements associated with the specific fund type associate with each ATO and the funding will be identified at the time the scope of work is released.

### **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.

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, 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 core construction management staffing positions, including key personnel positions. Proposer is not required to adhere solely to the suggested list but may propose as they believe warranted for the contract.

- 1) Suggested Core Construction Management Staffing
  - a. Project Manager/ Resident Engineer, Professional Engineer (PE) \*
  - b. Project Controls
  - c. Office Engineer
  - d. Office/Labor Compliance Administrator
  - e. Change Order Engineer
  - f. Assistant Resident Engineer/Lead Inspector PE
  - g. Structure Representative PE \*
  - h. Structure Inspector
  - i. Inspector/Storm Water Inspector QSP, QSD
  - j. Landscape Inspector
  - k. Civil/Roadway/Electric Inspector

\* Denoted as Key Personnel

The following is a non-exhaustive list of construction management support services that may be required over the duration of the agreement.

- 2) Construction Management Support Services (non-exhaustive listing)
  - a. Constructability Review
  - b. Construction Inspection



- c. Construction Contract Administration
- d. Office Engineering
- e. Document Control
- f. Surveys
- g. Source Inspection
- h. Change Order/Claims
- i. Independent Cost Estimating
- j. Labor Compliance
- k. Environmental Compliance
- l. Scheduling
- m. Permitting/Permit Coordination
- n. Safety Assessment/Compliance
- o. Utility Coordination
- p. Drone and Crawling Camera/Video Inspection Services

**OFFERER Personnel for Construction Management Support Services:**

OFFERER shall provide qualified and experienced personnel to oversee and implement all required construction management support services for the project.

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, City, County and/or other Authority's Having Jurisdiction (AHJ) regulations, policies, procedures, manuals, and standards as modified by the Commission's General Conditions and procedures.

If a member of OFFEROR's personnel is on a leave of absence, OFFEROR's project manager/RE will 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.

**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. Construction 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 each Project using the Caltrans Construction Manual as a guideline. OFFEROR shall transmit

certain project records to the Commission using an electronic transfer and collection system. OFFEROR will also maintain a hard copy of project records. (Commission will train OFFEROR in the requirements and use of the system if needed.).

- f. 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.
- g. 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.
- h. OFFEROR shall review and ensure compliance with environmental requirements.
- i. 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.
- j. OFFEROR shall review Contractors' certified payroll records and other labor compliance records and assure the construction Contractor's compliance with Contract requirements.
- k. OFFEROR shall monitor and maintain records to assure that the construction Contractor complies with all provisions of the Storm Water Pollution Prevention Plan (SWPPP).
- l. OFFEROR shall assure that the Project meets all applicable regulations of the Air Quality Management District (AQMD).

**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 support staff, project stakeholders, AHJ's, 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 utility 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 lane closure requests and forward to local jurisdictions for approval as necessary.
- l. OFFEROR shall coordinate all Project construction activities with other on-

going projects within and adjacent to the Project limits.

OFFEROR shall review existing highway electrical and traffic systems arrangements with County 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 City and 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. Assessment and 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 County 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**

### **a. Surveys**

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.

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. Drone Services and Crawling Camera/Video Inspection

OFFEROR will provide (as requested):

Drone Services

- 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.

Crawling Camera/Video Inspection Services

- Crawling Camera and/or video inspection services for investigative needs of underground facilities or other inaccessible/restrictive locations.

c. 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.

**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. Independent costs estimates shall be developed as required to justify Contractor costs. 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.
- d. 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.
- e. OFFEROR shall implement a bi-weekly change order meeting with RCTC 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.

**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.
- f. OFFEROR shall prepare and deliver to COMMISSION all project files in hard copy and/or electronic format.
- g. OFFEROR shall assist COMMISSION and Contractor in obtaining final release of all project permits.

**DELIVERABLES.** NOTE: The OFFEROR shall maintain records as described below in the Construction Field Office. In addition, certain records shall be transmitted electronically as the work proceeds to the Commission using SharePoint and/or Laserfiche per the Commissions procedures.

- a. Inspector daily reports, extra work diaries, Landscape Architect, and Resident Engineers' daily diaries.
- b. Monthly Project Activity Summary Reports.
- 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. Project Completion Report.
- g. 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.
- h. Certified payrolls and fringe benefit statements for all employees, OFFEROR and Contractor, who are subject to the State and/or Federal prevailing wage rates.
- i. 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.
- j. 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.

- k. 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 OFFEROR for future reference.

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.

- l. Survey deliverables shall follow the format specified below:

- Horizontal Control
- Alpha numeric hard copy point listing with adjusted California Coordinate System northing and eastings and the appropriate descriptions.
- Vertical Control
- Alpha numeric hard copy benchmark listing with adjusted elevations compatible with the design datum.
- Topography
- Alpha numeric hard copy listing, hard copy 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.

m. 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

n. Other

As specified in the survey request.

**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 Attachment B, 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 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 copies of all Project construction documents including plans, special provisions, reports, designer prepared resident engineer files, and contracts.
- 2) COMMISSION will provide copies of all previously secured permits and Project authorizations.

### **Standards**

All construction inspection, surveys, 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.

For projects that fall under City, County or other Authority's Having Jurisdiction, OFFEROR shall follow applicable standards, specifications (i.e. Greenbook), manuals, policies, procedures and 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 Offerors, 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 Offerors 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 or other AHJ's as applicable.
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"**  
**COMPENSATION AND PAYMENT**

**[attached behind this page]**

**EXHIBIT "C"**  
**COMPENSATION SUMMARY<sup>1</sup>**

| FISCAL YEAR | PROJECT                   | COST                   |
|-------------|---------------------------|------------------------|
| FY 2024/25  | Services                  | \$ 145,000.00          |
| FY 2025/26  | Services                  | 1,200,000.00           |
| FY 2026/27  | Services                  | 1,100,000.00           |
| FY 2027/28  | Services                  | 395,000.00             |
|             | <b>SUBTOTAL</b>           | <b>2,840,000.00</b>    |
|             | <b>OTHER DIRECT COSTS</b> | <b>100,000.00</b>      |
|             | <b>TOTAL COSTS</b>        | <b>\$ 2,940,000.00</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.

**EXHIBIT "C"**  
**CALTRANS/STATE REQUIREMENTS**

**[attached behind this page]**

## EXHIBIT "C"

### CALTRANS/STATE 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. FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, Consultant shall not discriminate against any employee for employment on account 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. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section. Consultant shall include this provision in all subconsultants for Services to be provided under this Agreement.

2. Consultant and all subconconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, 12900 et seq.), and the applicable regulations promulgated thereunder (Cal. Code Regs., Title 2, 11000, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and all subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. Consultant shall, and shall require that its subconsultants, permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by State, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by State, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.



4. Remedies for Willful Violation:

(a) State may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which Consultant was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that Consultant has violated the Fair Employment Practices Act.

(b) For willful violation of this Fair Employment Provision, the Commission shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by Commission in securing the goods or services hereunder shall be borne and paid for by Consultant, and Commission may deduct from any moneys due or thereafter may become due to Commission, the difference between the price named in the Agreement and the actual cost to Commission to cure Consultant's breach of this Agreement.

**2. 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.

### **3. PROMPT PAYMENT**

Consultant agrees to pay each subcontractor 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. Sections 6, Prompt Payment, of Exhibit "D" shall also apply.

### **4. RELEASE OF RETAINAGE**

No retainage will be withheld by the Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to Consultant and its subconsultants.

### **5. 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.

### **6. 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.

### **7. INVENTIONS.**

Rights to Inventions and Data Made Under a Contract or Agreement — Consultant shall comply with Federal requirements and regulations pertaining to patent rights with respect

to any discovery or invention which arises or is developed in the course of or under the Contract, and shall be in compliance with 10 CFR 600.325 and Appendix A—Patent and Data Rights to Subpart D, Part 600.

## **8. 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).

C. Energy Policy and Conservation Act (Pub. L. 94—163, 89 Stat. 871.) — Consultant shall comply with 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), which are incorporated by reference in this Contract. (10 CFR 600.236(i)(13).)

## **9. COMPLIANCE WITH ECONOMIC SANCTIONS IN RESPONSE TO RUSSIA'S ACTIONS IN UKRAINE.**

Consultant shall fully and adequately comply with California Executive Order N-6-22 (“Russian Sanctions Program”). As part of this compliance process, Consultant shall also certify compliance with the Russian Sanctions Program by completing the form located in Exhibit “E” (Russian Sanctions Certification), attached hereto and incorporated herein by reference. Consultant shall also require any subconsultants to comply with the Russian Sanctions Program and certify compliance pursuant to this Section.

## **10. ADDITIONAL FUNDING REQUIREMENTS**

The Commission may include, as part of any Task Order proposal request, additional State funding requirements applicable to the funding to be used for the relevant Task Order. Any such additional requirements shall be considered incorporated into this Agreement by reference as if fully set forth herein, and shall apply to all Services performed under the relevant Task Order.

**EXHIBIT "D"**

**FEDERAL DEPARTMENT OF TRANSPORTATION  
FHWA AND CALTRANS REQUIREMENTS**

**[attached behind this page]**

## 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 on 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. 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 Caltrans 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 22%. The goal for each Task Order, if different than the overall goal for the Agreement, may be set forth in the relevant Task Order. Participation by DBE Consultant or subconsultants shall be in accordance with information contained in Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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).

C. Energy Policy and Conservation Act (Pub. L. 94—163, 89 Stat. 871.) — Consultant shall comply with 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), which are incorporated by reference in this Contract. (10 CFR 600.236(i)(13).)

## **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"**

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

**[attached behind this page]**

**DRAFT**

## 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: \_\_\_\_\_

**EXHIBIT "F"**  
**LOBBYING ACTIVITIES DISCLOSURE**

**[attached behind this page]**

**EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES**

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<br/> <input type="checkbox"/> b. grant<br/> <input type="checkbox"/> c. cooperative agreement<br/> <input type="checkbox"/> d. loan<br/> <input type="checkbox"/> e. loan guarantee<br/> <input type="checkbox"/> f. loan insurance</p>  | <p><b>2. Status of Federal Action:</b></p> <p><input type="checkbox"/> a. bid/offer/application<br/> <input type="checkbox"/> b. initial award<br/> <input type="checkbox"/> c. post-award</p>   | <p><b>3. Report Type:</b></p> <p><input type="checkbox"/> a. initial<br/> <input type="checkbox"/> b. material change</p> <p><b>For Material Change Only:</b><br/> year ____ quarter ____<br/> 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<br/> Tier _____, if known</p> <p>Congressional District, if known _____</p>  | <p><b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b></p> <p>Congressional District, if known _____</p>  |  |
| <p><b>6. Federal Department/Agency:</b></p>   | <p><b>7. Federal Program Name/Description:</b></p> <p>CFDA Number, if applicable _____</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><br/> (If individual, last name, first name, MI)</p>  | <p><b>11. Individuals Performing Services</b><br/> (including address if different from No. 10)<br/> (last name, first name, MI)</p>   |  |
| (attach Continuation Sheet(s) if necessary)   |  |  |
| <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<br/> <input type="checkbox"/> b. one-time fee<br/> <input type="checkbox"/> c. commission<br/> <input type="checkbox"/> d. contingent fee<br/> <input type="checkbox"/> e. deferred<br/> <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<br/> <input type="checkbox"/> b. in-kind; specify: nature _____<br/> 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 12:</b></p> <p>(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: <u>Issam Khalaf</u></p> <p>Title: <u>Vice President</u></p> <p>Telephone No.: <u>(949) 224-7607</u>      Date: <u>5/28/2024</u></p>  |  |
| <p>Authorized for Local Reproduction<br/> Standard Form - LLL</p>   |  |  |
| <p><b>Federal Use Only:</b></p>   |  |  |

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

**EXHIBIT "G"**

**DBE COMMITMENT FORM**

**[attached behind this page]**







Agreement No. 24-31-126-00

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

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
WSP USA INC.  
FOR ON-CALL**

**CONSTRUCTABILITY REVIEW AND MISCELLANEOUS  
CONSTRUCTION MANAGEMENT SUPPORT SERVICES FOR NON-RAIL CAPITAL  
PROJECTS**

**Parties and Date.**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and WSP USA 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 sources of funding for payment for on-call professional consulting services provided under this Agreement may include:

Local funds pursuant to the following programs: Measure A, Transportation Uniform Mitigation Funds (TUMF) and TUMF Community and Environmental Transportation Acceptability Process (CETAP);

State funds administered by the California Department of Transportation ("Caltrans") pursuant to the following programs: Senate Bill 1 (SB-1), State

Transportation Improvement Program (STIP), Office of State Highway Operations and Protection Program (SHOPP), Local Partnership Program (LPP), Trade Corridor Enhancement Program (TCEP), and Solutions for Congested Corridors Program (SCCP);

Federal funds from Federal Highway Administration (FHWA) and administered by Caltrans pursuant to the following programs: federal earmarks, Surface Transportation Block Grant program (STBG) and Congestion Mitigation & Air Quality (CMAQ) improvement program.

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.

E. Consultant desires to perform and assume responsibility for the provision of certain on-call construction management services for the construction of non-rail capital improvement projects in the County of Riverside, California. Services shall be provided 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.

F. 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 construction management 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 fully executed 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 the Schedule of Services set forth in a Task Order. 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.

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 the Commission will consider approval of this Agreement. 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 23 and 24 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 Consultant shall commence work after notification to proceed by Commission's Contract Administrator. This Agreement shall end on September 30, 2027, unless extended by contract amendment. The Commission may extend the term of this Agreement, in its sole discretion, for one additional two (2) year period.

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 **Ken Loncharich, Project 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: **Ken Loncharich, Abunnasr Husain, Behrooz Pirzadeh, George Malacalza, Thomas Kiepe, Chia-Chi Wang, AB Fakhouri, and Ben Quintana**, or as otherwise identified in the Task Order.

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. 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. 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 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.

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. 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, 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. 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 "B" and incorporated herein by reference, or any cost proposal included as part of a Task Order ("Cost Proposal") unless additional reimbursement is provided for by 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, this Agreement or any Task Order is required, the Agreement time or actual costs reimbursable by Commission shall be adjusted by written amendment to accommodate the changed work. The maximum total cost as specified in Section 19.10 shall not be exceeded, unless authorized by a written amendment.

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 to be set forth in each Task Order ("Fixed Fee"). The Fixed Fee is nonadjustable for each Task Order, 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 California Department of Human Resources (CalHR) rules, unless otherwise authorized by Commission. If the rates invoiced are in excess of those authorized CalHR 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 for a Task Order, 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 the Fixed Fee shall be included in the monthly progress payments. 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.

19.7 No payment shall be made prior to approval of any Services, nor for any Services performed prior to approval of this Agreement.

19.8 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

19.9 The total amount payable by Commission, including the Fixed Fee, shall not exceed the amount set forth in each Task Order.

19.10 Commission has or will enter into Five (5) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("Construction Management Services Task Order Contracts"). The other Construction Management Services Task Order Contracts are HDR (24-31-068-00), Falcon Engineering Services (24-31-124-00), Jacobs Project Management Co. (24-31-125-00), and Anser Advisory Management (24-31-127-00). The total amount payable by Commission for the Construction Management Services Task Order Contracts shall not exceed a cumulative maximum total value of Two Million Nine Hundred Forty Thousand Dollars (\$2,940,000) ("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 Construction Management Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the Construction Management Services Task Order Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the Construction Management Services Task Order

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.

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 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.

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 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.

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 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 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.

21.6 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.

21.7 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.

21.8 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 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, 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.

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 will 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 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.

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 "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.

## 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 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 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.

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 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.

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

## 27. Labor Code Requirements.

### 27.1 Prevailing Wages.

(a) 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) Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Section.

(c) 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>.

(d) 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. Since 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.

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

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, indemnify and hold Commission, 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, 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, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission, 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, 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.

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 \$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.

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.

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 expense.

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.

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.

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.

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.

(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's duties and services under this Agreement shall not include preparing or assisting the Commission with any portion of the Commission's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the Commission. The Commission shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Consultant shall cooperate with the Commission to ensure that all bidders for a subsequent contract on any subsequent phase of this Project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant pursuant to this Agreement.

(e) Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

(f) 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 Agreement 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 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.

37.2. 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.

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.

40. 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:**

WSP USA INC.  
862 E. Hospitality Ln., Ste. 350  
San Bernardino, CA 92406

\_\_\_\_\_  
Attn: Ken Loncharich\_\_\_\_\_

**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.

41. 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.

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

43. 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.

44. 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.

45. 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.

46. 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.

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

48. 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.

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

50. 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.

51. 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.

52. 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.

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

54. 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**

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

|   |  |
|---|--|
| <p><b>RIVERSIDE COUNTY<br/>TRANSPORTATION COMMISSION</b></p> <p>By: _____<br/><b>AARON HAKE</b><br/>Executive Director</p> <p><i>Approved as to Form:</i></p> <p>By: _____<br/>Best, Best &amp; Krieger LLP<br/>General Counsel</p> | <p><b>CONSULTANT<br/>WSP USA INC.</b></p> <p>By: _____<br/>Signature</p> <p>_____ Name</p> <p>_____ Title</p> <p><b>ATTEST:</b></p> <p>By: _____</p> <p>Its: _____</p> |
|---|--|

\* 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]**

## SCOPE OF WORK

The Riverside County Transportation Commission (the "Commission") intends to contract with an on-call "bench" of qualified Consultants to provide Constructability Reviews and Miscellaneous Construction Management Support Services for Commission's Non-Railroad Capital Infrastructure Projects on an on-call basis pursuant to task orders to be issued in accordance with the terms of this RFQ and the Commission's model agreement. The selected Consultants will supplement the work of the Commission Staff in accordance with the specifications described herein.

This on-call contract is intended to provide the Commission with selective Construction Management (CM) support services on an as-needed basis where full-scale CM services are either; 1) not yet required due to the current stage of the project or 2) not warranted due to the project's scale. These services may include, but are not limited to:

- Design Stage Constructability Reviews
- Construction Inspection Support
- Construction Contract Administration Support
- Office Engineering Support
- Construction Survey Support
- Source Inspection Services
- Change Order/Claim Support
- Independent Cost Estimating Support
- Labor Compliance Support
- Environmental Compliance Support
- Schedule Support
- Permitting/Permit Coordination
- Safety Assessment/Compliance
- Utility Coordination
- Drone and Crawling Camera/Video Inspection Services

Consultants should have the flexibility to provide any multitude of services for a given task order while having the capacity to support multiple task orders at the same time. A Consultant's participation in early CM services related to this on-call contract, such as Constructability Reviews, will not preclude them from participating in a project's future full-scale CM procurement issued by the Commission. Participation in these early CM services also does not guarantee award of a future full CM services contract. Future full CM services will be separately competitively procured, and members of the selection panel will differ than those that will participate in the on-call task order selection process.

Projects for which construction management support services may be required include, new interchange projects, existing interchange improvement projects, trail projects, pavement rehabilitation, road resurfacing projects, highway improvement projects, County and/or City roads improvement and any other non-railroad projects which falls directly under the Commission Capital Project division.

As construction management support needs arise, the Commission will develop a brief scope of work and will issue a request for task order proposals to the bench of contracted firms selected pursuant to this RFQ. Award of task orders will be made to the firm: (i) determined most qualified based on a review of the task order proposals in accordance

with the review criteria to be set forth in the request for task order, and (ii) proposing a reasonable price, as determined by the Commission. If the Commission and the first ranked firm are unable to negotiate a reasonable price for the task order work, negotiations shall commence with the next highest ranked firm, and shall continue until a task order is awarded. For non-State or federally funded task orders, the Commission may include price as a consideration in task order proposal evaluation and award, and/or may issue task orders in accordance with procedures determined to be in the Commission's best interest.

Approval and authorization to proceed for the designated scope of work will be documented in an Agreement Task Order (ATO). The Consultant will be required to commence work within five days or sooner after receiving a fully executed ATO.

Payment for each ATO will be in accordance with the Cost Proposal conditions in the selected Consultant's parent agreement.

These services will be funded using a variety of federal, state, and local funds. The Consultant shall meet all the requirements associated with the specific fund type associate with each ATO and the funding will be identified at the time the scope of work is released.

### **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.

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, 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 core construction management staffing positions, including key personnel positions. Proposer is not required to adhere solely to the suggested list but may propose as they believe warranted for the contract.

- 1) Suggested Core Construction Management Staffing
  - a. Project Manager/ Resident Engineer, Professional Engineer (PE) \*
  - b. Project Controls
  - c. Office Engineer
  - d. Office/Labor Compliance Administrator
  - e. Change Order Engineer
  - f. Assistant Resident Engineer/Lead Inspector PE
  - g. Structure Representative PE \*
  - h. Structure Inspector
  - i. Inspector/Storm Water Inspector QSP, QSD
  - j. Landscape Inspector
  - k. Civil/Roadway/Electric Inspector

\* Denoted as Key Personnel

The following is a non-exhaustive list of construction management support services that may be required over the duration of the agreement.

- 2) Construction Management Support Services (non-exhaustive listing)
  - a. Constructability Review
  - b. Construction Inspection

- c. Construction Contract Administration
- d. Office Engineering
- e. Document Control
- f. Surveys
- g. Source Inspection
- h. Change Order/Claims
- i. Independent Cost Estimating
- j. Labor Compliance
- k. Environmental Compliance
- l. Scheduling
- m. Permitting/Permit Coordination
- n. Safety Assessment/Compliance
- o. Utility Coordination
- p. Drone and Crawling Camera/Video Inspection Services

**OFFERER Personnel for Construction Management Support Services:**

OFFERER shall provide qualified and experienced personnel to oversee and implement all required construction management support services for the project.

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, City, County and/or other Authority's Having Jurisdiction (AHJ) regulations, policies, procedures, manuals, and standards as modified by the Commission's General Conditions and procedures.

If a member of OFFEROR's personnel is on a leave of absence, OFFEROR's project manager/RE will 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.

**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. Construction 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 each Project using the Caltrans Construction Manual as a guideline. OFFEROR shall transmit

certain project records to the Commission using an electronic transfer and collection system. OFFEROR will also maintain a hard copy of project records. (Commission will train OFFEROR in the requirements and use of the system if needed.).

- f. 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.
- g. 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.
- h. OFFEROR shall review and ensure compliance with environmental requirements.
- i. 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.
- j. OFFEROR shall review Contractors' certified payroll records and other labor compliance records and assure the construction Contractor's compliance with Contract requirements.
- k. OFFEROR shall monitor and maintain records to assure that the construction Contractor complies with all provisions of the Storm Water Pollution Prevention Plan (SWPPP).
- l. OFFEROR shall assure that the Project meets all applicable regulations of the Air Quality Management District (AQMD).

**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 support staff, project stakeholders, AHJ's, 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 utility 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 lane closure requests and forward to local jurisdictions for approval as necessary.
- l. OFFEROR shall coordinate all Project construction activities with other on-

going projects within and adjacent to the Project limits.

OFFEROR shall review existing highway electrical and traffic systems arrangements with County 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 City and 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. Assessment and 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 County 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**

### **a. Surveys**

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.

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. Drone Services and Crawling Camera/Video Inspection

OFFEROR will provide (as requested):

Drone Services

- 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.

Crawling Camera/Video Inspection Services

- Crawling Camera and/or video inspection services for investigative needs of underground facilities or other inaccessible/restrictive locations.

c. 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.

**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. Independent costs estimates shall be developed as required to justify Contractor costs. 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.
- d. 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.
- e. OFFEROR shall implement a bi-weekly change order meeting with RCTC 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.

**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.
- f. OFFEROR shall prepare and deliver to COMMISSION all project files in hard copy and/or electronic format.
- g. OFFEROR shall assist COMMISSION and Contractor in obtaining final release of all project permits.

**DELIVERABLES.** NOTE: The OFFEROR shall maintain records as described below in the Construction Field Office. In addition, certain records shall be transmitted electronically as the work proceeds to the Commission using SharePoint and/or Laserfiche per the Commissions procedures.

- a. Inspector daily reports, extra work diaries, Landscape Architect, and Resident Engineers' daily diaries.
- b. Monthly Project Activity Summary Reports.
- 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. Project Completion Report.
- g. 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.
- h. Certified payrolls and fringe benefit statements for all employees, OFFEROR and Contractor, who are subject to the State and/or Federal prevailing wage rates.
- i. 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.
- j. 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.

- k. 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 OFFEROR for future reference.

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.

- l. Survey deliverables shall follow the format specified below:

- Horizontal Control
- Alpha numeric hard copy point listing with adjusted California Coordinate System northing and eastings and the appropriate descriptions.
- Vertical Control
- Alpha numeric hard copy benchmark listing with adjusted elevations compatible with the design datum.
- Topography
- Alpha numeric hard copy listing, hard copy 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.

m. 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

n. Other

As specified in the survey request.

**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 Attachment B, 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 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 copies of all Project construction documents including plans, special provisions, reports, designer prepared resident engineer files, and contracts.
- 2) COMMISSION will provide copies of all previously secured permits and Project authorizations.

### **Standards**

All construction inspection, surveys, 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.

For projects that fall under City, County or other Authority's Having Jurisdiction, OFFEROR shall follow applicable standards, specifications (i.e. Greenbook), manuals, policies, procedures and 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 Offerors, 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 Offerors 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 or other AHJ's as applicable.
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"**  
**COMPENSATION AND PAYMENT**

**[attached behind this page]**

**EXHIBIT "C"**  
**COMPENSATION SUMMARY<sup>1</sup>**

| FISCAL YEAR               | PROJECT  | COST                   |
|---------------------------|----------|------------------------|
| FY 2024/25                | Services | \$ 145,000.00          |
| FY 2025/26                | Services | 1,200,000.00           |
| FY 2026/27                | Services | 1,100,000.00           |
| FY 2027/28                | Services | 395,000.00             |
| <b>SUBTOTAL</b>           |          | <b>2,840,000.00</b>    |
| <b>OTHER DIRECT COSTS</b> |          | <b>100,000.00</b>      |
| <b>TOTAL COSTS</b>        |          | <b>\$ 2,940,000.00</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.

**EXHIBIT "C"**  
**CALTRANS/STATE REQUIREMENTS**

**[attached behind this page]**

## EXHIBIT "C"

### CALTRANS/STATE 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. FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, Consultant shall not discriminate against any employee for employment on account 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. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section. Consultant shall include this provision in all subconsultants for Services to be provided under this Agreement.

2. Consultant and all subconconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, 12900 et seq.), and the applicable regulations promulgated thereunder (Cal. Code Regs., Title 2, 11000, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and all subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. Consultant shall, and shall require that its subconsultants, permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by State, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by State, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

4. Remedies for Willful Violation:

(a) State may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which Consultant was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that Consultant has violated the Fair Employment Practices Act.

(b) For willful violation of this Fair Employment Provision, the Commission shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by Commission in securing the goods or services hereunder shall be borne and paid for by Consultant, and Commission may deduct from any moneys due or thereafter may become due to Commission, the difference between the price named in the Agreement and the actual cost to Commission to cure Consultant's breach of this Agreement.

**2. 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.

### **3. PROMPT PAYMENT**

Consultant agrees to pay each subcontractor 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. Sections 6, Prompt Payment, of Exhibit "D" shall also apply.

### **4. RELEASE OF RETAINAGE**

No retainage will be withheld by the Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to Consultant and its subconsultants.

### **5. 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.

### **6. 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.

### **7. INVENTIONS.**

Rights to Inventions and Data Made Under a Contract or Agreement — Consultant shall comply with Federal requirements and regulations pertaining to patent rights with respect



to any discovery or invention which arises or is developed in the course of or under the Contract, and shall be in compliance with 10 CFR 600.325 and Appendix A—Patent and Data Rights to Subpart D, Part 600.

## **8. 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).

C. Energy Policy and Conservation Act (Pub. L. 94—163, 89 Stat. 871.) — Consultant shall comply with 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), which are incorporated by reference in this Contract. (10 CFR 600.236(i)(13).)

## **9. COMPLIANCE WITH ECONOMIC SANCTIONS IN RESPONSE TO RUSSIA'S ACTIONS IN UKRAINE.**

Consultant shall fully and adequately comply with California Executive Order N-6-22 (“Russian Sanctions Program”). As part of this compliance process, Consultant shall also certify compliance with the Russian Sanctions Program by completing the form located in Exhibit “E” (Russian Sanctions Certification), attached hereto and incorporated herein by reference. Consultant shall also require any subconsultants to comply with the Russian Sanctions Program and certify compliance pursuant to this Section.

## **10. ADDITIONAL FUNDING REQUIREMENTS**

The Commission may include, as part of any Task Order proposal request, additional State funding requirements applicable to the funding to be used for the relevant Task Order. Any such additional requirements shall be considered incorporated into this Agreement by reference as if fully set forth herein, and shall apply to all Services performed under the relevant Task Order.

**EXHIBIT "D"**

**FEDERAL DEPARTMENT OF TRANSPORTATION  
FHWA AND CALTRANS REQUIREMENTS**

**[attached behind this page]**

## 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 on 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. 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 Caltrans 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 22%. The goal for each Task Order, if different than the overall goal for the Agreement, may be set forth in the relevant Task Order. Participation by DBE Consultant or subconsultants shall be in accordance with information contained in Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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).

C. Energy Policy and Conservation Act (Pub. L. 94—163, 89 Stat. 871.) — Consultant shall comply with 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), which are incorporated by reference in this Contract. (10 CFR 600.236(i)(13).)

## **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"**

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

**[attached behind this page]**

**DRAFT**

## 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: \_\_\_\_\_

**EXHIBIT "F"**  
**LOBBYING ACTIVITIES DISCLOSURE**

**[attached behind this page]**

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

|  |                                   |  |                                  |   |  |
|--|-----------------------------------|--|----------------------------------|---|--|
| <b>1. Type of Federal Action:</b>  |                                   | <b>2. Status of Federal Action:</b>  |                                  | <b>3. Report Type:</b>                      |  |
| <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 |
| <b>4. Name and Address of Reporting Entity</b>   |                                   | <input type="checkbox"/> a. bid/offer/application                                      |                                  | <input type="checkbox"/> a. initial         |  |
| <input type="checkbox"/> Prime   |                                   | <input type="checkbox"/> b. initial award  |                                  | <input type="checkbox"/> b. material change |  |
| <input type="checkbox"/> Subawardee  |                                   | <input type="checkbox"/> c. post-award   |                                  | <b>For Material Change Only:</b>            |  |
| Tier _____, if known   |                                   |  |                                  | year _____ quarter _____                    |  |
| Congressional District, if known   |                                   |  |                                  | date of last report _____                   |  |
| <b>6. Federal Department/Agency:</b>   |                                   | <b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b> |                                  |   |  |
|  |                                   | Congressional District, if known   |                                  |   |  |
| <b>8. Federal Action Number, if known:</b>   |                                   | <b>7. Federal Program Name/Description:</b>  |                                  |   |  |
|  |                                   | CFDA Number, if applicable _____   |                                  |   |  |
| <b>10. Name and Address of Lobby Entity</b>  |                                   | <b>9. Award Amount, if known:</b>  |                                  |   |  |
| (If individual, last name, first name, MI)   |                                   |  |                                  |   |  |
|  |                                   | <b>11. Individuals Performing Services</b>   |                                  |   |  |
|  |                                   | (including address if different from No. 10)   |                                  |   |  |
|  |                                   | (last name, first name, MI)  |                                  |   |  |
| (attach Continuation Sheet(s) if necessary)  |                                   |  |                                  |   |  |
| <b>12. Amount of Payment (check all that apply)</b>  |                                   | <b>14. Type of Payment (check all that apply)</b>                                      |                                  |   |  |
| \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned  |                                   | <input type="checkbox"/> a. retainer   |                                  |   |  |
| <b>13. Form of Payment (check all that apply):</b>   |                                   | <input type="checkbox"/> b. one-time fee   |                                  |   |  |
| <input type="checkbox"/> a. cash   |                                   | <input type="checkbox"/> c. commission   |                                  |   |  |
| <input type="checkbox"/> b. in-kind; specify: nature _____   |                                   | <input type="checkbox"/> d. contingent fee   |                                  |   |  |
| Value _____  |                                   | <input type="checkbox"/> e. deferred   |                                  |   |  |
|  |                                   | <input type="checkbox"/> f. other, specify _____                                       |                                  |   |  |
| <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 12:</b>   |                                   |  |                                  |   |  |
| (attach Continuation Sheet(s) if necessary)  |                                   |  |                                  |   |  |
| <b>16. Continuation Sheet(s) attached:</b>   |                                   | Yes <input type="checkbox"/> No <input type="checkbox"/>                               |                                  |   |  |
| <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> |                                   | Signature: <u><i>Federico C. Valencia</i></u>  |                                  |   |  |
|  |                                   | Print Name: <u>Federico C. Valencia</u>  |                                  |   |  |
|  |                                   | Title: <u>President</u>  |                                  |   |  |
|  |                                   | Telephone No.: <u>(909) 915-4825</u> Date: <u>5/14/2024</u>                            |                                  |   |  |
| <b>This form is not applicable to B&amp;R Consulting Engineers Inc.</b>  |                                   |  |                                  |   |  |
|  |                                   |  |                                  | Authorized for Local Reproduction           |  |
| <b>Federal Use Only:</b>   |                                   |  |                                  | Standard Form - LLL                         |  |

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

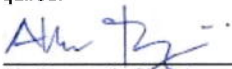
**EXHIBIT "G"**

**DBE COMMITMENT FORM**

**[attached behind this page]**

**EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT**

1. Local Agency: Riverside County Transportation Commission      2. Contract DBE Goal: 22%  
 3. Project Description: On-Call Constructibility Review and Misc CM Support Services for Non-Rail Capital Projects  
 4. Project Location: Various Locations in Riverside County  
 5. Consultant's Name: WSP USA, Inc.      6. Prime Certified DBE:

| 7. Description of Work, Service, or Materials Supplied  | 8. DBE Certification Number | 9. DBE Contact Information   | 10. DBE %   |
|---|-----------------------------|--|-------------|
| Electrical Inspection, RE   | 39638                       | Dynamic Engineering Services, Inc.<br>Chia-Chi Wang<br>ccwang@dynamicsesi.com  | 5%          |
| Field Inspection (Roadway and Structures)   | 48368                       | B&R Consulting Engineers, Inc.<br>Fred Valencia<br>fvalencia@bandrinc.com  | 4%          |
| Field Inspection, RE  | 46140                       | FCG Consultants, Inc.<br>Maha Fakhouri<br>maha.fakhouri@fcgconsultants.com   | 4%          |
| Field Inspection  | 30866                       | S2 Engineering<br>Pavitra Pandey<br>pavitrapp@s2-ei.com  | 2%          |
| Field Inspection  | 50918                       | Skyline Consultants, Inc.<br>Maliha Malik<br>mmalik@skylineconsults.com  | 2%          |
| Surveying   | 2128                        | Coast Surveying, Inc.<br>Ruel del Castillo<br>ruel.delcastillo@coastsurvey.com   | 3%          |
| Field Inspection  | 38771                       | La Salle Solutions, LLC<br>Dennis La Salle<br>dlasalle@lasallecm.com   | 2%          |
| <b>Local Agency to Complete this Section</b>  |                             |  |             |
| 17. Local Agency Contract Number: _____<br>18. Federal-Aid Project Number: _____<br>19. Proposed Contract Execution Date: _____   |                             | <b>11. TOTAL CLAIMED DBE PARTICIPATION</b>   | <b>22 %</b> |
| Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.<br><br>_____<br>20. Local Agency Representative's Signature      21. Date<br><br>_____<br>22. Local Agency Representative's Name      23. Phone<br><br>_____<br>24. Local Agency Representative's Title |                             |  |             |
|   |                             | IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.<br><br><br>_____<br>12. Preparer's Signature      13. Date<br>Allan Tanjuaquio      (909) 994-5516<br>_____<br>14. Preparer's Name      15. Phone<br>Senior Vice President<br>_____<br>16. Preparer's Title |             |

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

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





Agreement No. 24-31-127-00

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

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
ANSER ADVISORY MANAGEMENT  
FOR ON-CALL**

**CONSTRUCTABILITY REVIEW AND MISCELLANEOUS  
CONSTRUCTION MANAGEMENT SUPPORT SERVICES FOR NON-RAIL CAPITAL  
PROJECTS**

**Parties and Date.**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and ANSER ADVISORY MANAGEMENT ("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 sources of funding for payment for on-call professional consulting services provided under this Agreement may include:

Local funds pursuant to the following programs: Measure A, Transportation Uniform Mitigation Funds (TUMF) and TUMF Community and Environmental Transportation Acceptability Process (CETAP);

State funds administered by the California Department of Transportation ("Caltrans") pursuant to the following programs: Senate Bill 1 (SB-1), State

Transportation Improvement Program (STIP), Office of State Highway Operations and Protection Program (SHOPP), Local Partnership Program (LPP), Trade Corridor Enhancement Program (TCEP), and Solutions for Congested Corridors Program (SCCP);

Federal funds from Federal Highway Administration (FHWA) and administered by Caltrans pursuant to the following programs: federal earmarks, Surface Transportation Block Grant program (STBG) and Congestion Mitigation & Air Quality (CMAQ) improvement program.

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.

E. Consultant desires to perform and assume responsibility for the provision of certain on-call construction management services for the construction of non-rail capital improvement projects in the County of Riverside, California. Services shall be provided 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.

F. 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 construction management 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 fully executed 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 the Schedule of Services set forth in a Task Order. 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.

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 the Commission will consider approval of this Agreement. 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 23 and 24 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 Consultant shall commence work after notification to proceed by Commission's Contract Administrator. This Agreement shall end on September 30, 2027, unless extended by contract amendment. The Commission may extend the term of this Agreement, in its sole discretion, for one additional two (2) year period.

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 **Craig Halvorson, Regional Managing Director/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: **Lucas Rathe, Tyson Atwood, and Scott Walker**, or as otherwise identified in the Task Order.

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. 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. 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 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.

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. 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, 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. 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 "B" and incorporated herein by reference, or any cost proposal included as part of a Task Order ("Cost Proposal") unless additional reimbursement is provided for by 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, this Agreement or any Task Order is required, the Agreement time or actual costs reimbursable by Commission shall be adjusted by written amendment to accommodate the changed work. The maximum total cost as specified in Section 19.10 shall not be exceeded, unless authorized by a written amendment.

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 to be set forth in each Task Order ("Fixed Fee"). The Fixed Fee is nonadjustable for each Task Order, 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 California Department of Human Resources (CalHR) rules, unless otherwise authorized by Commission. If the rates invoiced are in excess of those authorized CalHR 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 for a Task Order, 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 the Fixed Fee shall be included in the monthly progress payments. 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.

19.7 No payment shall be made prior to approval of any Services, nor for any Services performed prior to approval of this Agreement.

19.8 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

19.9 The total amount payable by Commission, including the Fixed Fee, shall not exceed the amount set forth in each Task Order.

19.10 Commission has or will enter into Five (5) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("Construction Management Services Task Order Contracts"). The other Construction Management Services Task Order Contracts are HDR (24-31-068-00), Falcon Engineering Services (24-31-124-00), Jacobs Project Management Co. (24-31-125-00), and WSP USA (24-31-126-00). The total amount payable by Commission for the Construction Management Services Task Order Contracts shall not exceed a cumulative maximum total value of Two Million Nine Hundred Forty Thousand Dollars (\$2,940,000) ("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 Construction Management Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the Construction Management Services Task Order Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the Construction Management Services Task Order 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.

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 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.

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 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.

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 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 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.

21.6 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.

21.7 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.

21.8 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 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, 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.

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 will 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 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.

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 "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.

## 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 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 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.

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 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.

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

## 27. Labor Code Requirements.

### 27.1 Prevailing Wages.

(a) 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) Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Section.

(c) 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>.

(d) 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. Since 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.

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

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, indemnify and hold Commission, 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, 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, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission, 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, 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.

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 \$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.

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.

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 expense.

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.

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.

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.

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.

(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's duties and services under this Agreement shall not include preparing or assisting the Commission with any portion of the Commission's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the Commission. The Commission shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Consultant shall cooperate with the Commission to ensure that all bidders for a subsequent contract on any subsequent phase of this Project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant pursuant to this Agreement.

(e) Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

(f) 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 Agreement 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 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.

37.2. 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.

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.

40. 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:**

Anser Advisory Management, LLC  
300 Spectrum Center Dr., Ste. 1400  
Irvine, CA 92618

\_\_\_\_\_  
Attn: Craig Halvorson \_\_\_\_\_

**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.

41. 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.

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

43. 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.

44. 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.

45. 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.

46. 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.

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

48. 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.

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

50. 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.

51. 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.

52. 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.

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

54. 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**

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

|   |  |
|---|--|
| <p><b>RIVERSIDE COUNTY<br/>TRANSPORTATION COMMISSION</b></p> <p>By: _____<br/><b>AARON HAKE</b><br/>Executive Director</p> <p><i>Approved as to Form:</i></p> <p>By: _____<br/>Best, Best &amp; Krieger LLP<br/>General Counsel</p> | <p><b>CONSULTANT<br/>ANSER ADVISORY MANAGEMENT,<br/>LLC</b></p> <p>By: _____<br/>Signature</p> <p>_____<br/>Name</p> <p>_____<br/>Title</p> <p><b>ATTEST:</b></p> <p>By: _____</p> <p>Its: _____</p> |
|---|--|

\* 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]**

## SCOPE OF WORK

The Riverside County Transportation Commission (the "Commission") intends to contract with an on-call "bench" of qualified Consultants to provide Constructability Reviews and Miscellaneous Construction Management Support Services for Commission's Non-Railroad Capital Infrastructure Projects on an on-call basis pursuant to task orders to be issued in accordance with the terms of this RFQ and the Commission's model agreement. The selected Consultants will supplement the work of the Commission Staff in accordance with the specifications described herein.

This on-call contract is intended to provide the Commission with selective Construction Management (CM) support services on an as-needed basis where full-scale CM services are either; 1) not yet required due to the current stage of the project or 2) not warranted due to the project's scale. These services may include, but are not limited to:

- Design Stage Constructability Reviews
- Construction Inspection Support
- Construction Contract Administration Support
- Office Engineering Support
- Construction Survey Support
- Source Inspection Services
- Change Order/Claim Support
- Independent Cost Estimating Support
- Labor Compliance Support
- Environmental Compliance Support
- Schedule Support
- Permitting/Permit Coordination
- Safety Assessment/Compliance
- Utility Coordination
- Drone and Crawling Camera/Video Inspection Services

Consultants should have the flexibility to provide any multitude of services for a given task order while having the capacity to support multiple task orders at the same time. A Consultant's participation in early CM services related to this on-call contract, such as Constructability Reviews, will not preclude them from participating in a project's future full-scale CM procurement issued by the Commission. Participation in these early CM services also does not guarantee award of a future full CM services contract. Future full CM services will be separately competitively procured, and members of the selection panel will differ than those that will participate in the on-call task order selection process.

Projects for which construction management support services may be required include, new interchange projects, existing interchange improvement projects, trail projects, pavement rehabilitation, road resurfacing projects, highway improvement projects, County and/or City roads improvement and any other non-railroad projects which falls directly under the Commission Capital Project division.

As construction management support needs arise, the Commission will develop a brief scope of work and will issue a request for task order proposals to the bench of contracted firms selected pursuant to this RFQ. Award of task orders will be made to the firm: (i) determined most qualified based on a review of the task order proposals in accordance

with the review criteria to be set forth in the request for task order, and (ii) proposing a reasonable price, as determined by the Commission. If the Commission and the first ranked firm are unable to negotiate a reasonable price for the task order work, negotiations shall commence with the next highest ranked firm, and shall continue until a task order is awarded. For non-State or federally funded task orders, the Commission may include price as a consideration in task order proposal evaluation and award, and/or may issue task orders in accordance with procedures determined to be in the Commission's best interest.

Approval and authorization to proceed for the designated scope of work will be documented in an Agreement Task Order (ATO). The Consultant will be required to commence work within five days or sooner after receiving a fully executed ATO.

Payment for each ATO will be in accordance with the Cost Proposal conditions in the selected Consultant's parent agreement.

These services will be funded using a variety of federal, state, and local funds. The Consultant shall meet all the requirements associated with the specific fund type associate with each ATO and the funding will be identified at the time the scope of work is released.

### **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.

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, 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 core construction management staffing positions, including key personnel positions. Proposer is not required to adhere solely to the suggested list but may propose as they believe warranted for the contract.

- 1) Suggested Core Construction Management Staffing
  - a. Project Manager/ Resident Engineer, Professional Engineer (PE) \*
  - b. Project Controls
  - c. Office Engineer
  - d. Office/Labor Compliance Administrator
  - e. Change Order Engineer
  - f. Assistant Resident Engineer/Lead Inspector PE
  - g. Structure Representative PE \*
  - h. Structure Inspector
  - i. Inspector/Storm Water Inspector QSP, QSD
  - j. Landscape Inspector
  - k. Civil/Roadway/Electric Inspector

\* Denoted as Key Personnel

The following is a non-exhaustive list of construction management support services that may be required over the duration of the agreement.

- 2) Construction Management Support Services (non-exhaustive listing)
  - a. Constructability Review
  - b. Construction Inspection

- c. Construction Contract Administration
- d. Office Engineering
- e. Document Control
- f. Surveys
- g. Source Inspection
- h. Change Order/Claims
- i. Independent Cost Estimating
- j. Labor Compliance
- k. Environmental Compliance
- l. Scheduling
- m. Permitting/Permit Coordination
- n. Safety Assessment/Compliance
- o. Utility Coordination
- p. Drone and Crawling Camera/Video Inspection Services

**OFFERER Personnel for Construction Management Support Services:**

OFFERER shall provide qualified and experienced personnel to oversee and implement all required construction management support services for the project.

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, City, County and/or other Authority's Having Jurisdiction (AHJ) regulations, policies, procedures, manuals, and standards as modified by the Commission's General Conditions and procedures.

If a member of OFFEROR's personnel is on a leave of absence, OFFEROR's project manager/RE will 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.

**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. Construction 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 each Project using the Caltrans Construction Manual as a guideline. OFFEROR shall transmit

certain project records to the Commission using an electronic transfer and collection system. OFFEROR will also maintain a hard copy of project records. (Commission will train OFFEROR in the requirements and use of the system if needed.).

- f. 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.
- g. 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.
- h. OFFEROR shall review and ensure compliance with environmental requirements.
- i. 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.
- j. OFFEROR shall review Contractors' certified payroll records and other labor compliance records and assure the construction Contractor's compliance with Contract requirements.
- k. OFFEROR shall monitor and maintain records to assure that the construction Contractor complies with all provisions of the Storm Water Pollution Prevention Plan (SWPPP).
- l. OFFEROR shall assure that the Project meets all applicable regulations of the Air Quality Management District (AQMD).

**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 support staff, project stakeholders, AHJ's, 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 utility 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 lane closure requests and forward to local jurisdictions for approval as necessary.
- l. OFFEROR shall coordinate all Project construction activities with other on-

going projects within and adjacent to the Project limits.

OFFEROR shall review existing highway electrical and traffic systems arrangements with County 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 City and 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. Assessment and 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 County 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**

### **a. Surveys**

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.

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. Drone Services and Crawling Camera/Video Inspection

OFFEROR will provide (as requested):

Drone Services

- 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.

Crawling Camera/Video Inspection Services

- Crawling Camera and/or video inspection services for investigative needs of underground facilities or other inaccessible/restrictive locations.

c. 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.

**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. Independent costs estimates shall be developed as required to justify Contractor costs. 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.
- d. 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.
- e. OFFEROR shall implement a bi-weekly change order meeting with RCTC 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.

**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.
- f. OFFEROR shall prepare and deliver to COMMISSION all project files in hard copy and/or electronic format.
- g. OFFEROR shall assist COMMISSION and Contractor in obtaining final release of all project permits.



**DELIVERABLES.** NOTE: The OFFEROR shall maintain records as described below in the Construction Field Office. In addition, certain records shall be transmitted electronically as the work proceeds to the Commission using SharePoint and/or Laserfiche per the Commissions procedures.

- a. Inspector daily reports, extra work diaries, Landscape Architect, and Resident Engineers' daily diaries.
- b. Monthly Project Activity Summary Reports.
- 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. Project Completion Report.
- g. 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.
- h. Certified payrolls and fringe benefit statements for all employees, OFFEROR and Contractor, who are subject to the State and/or Federal prevailing wage rates.
- i. 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.
- j. 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.

- k. 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 OFFEROR for future reference.

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.

- l. Survey deliverables shall follow the format specified below:

- Horizontal Control
- Alpha numeric hard copy point listing with adjusted California Coordinate System northing and eastings and the appropriate descriptions.
- Vertical Control
- Alpha numeric hard copy benchmark listing with adjusted elevations compatible with the design datum.
- Topography
- Alpha numeric hard copy listing, hard copy 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.

m. 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

n. Other

As specified in the survey request.

**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 Attachment B, 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 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 copies of all Project construction documents including plans, special provisions, reports, designer prepared resident engineer files, and contracts.
- 2) COMMISSION will provide copies of all previously secured permits and Project authorizations.

### **Standards**

All construction inspection, surveys, 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.

For projects that fall under City, County or other Authority's Having Jurisdiction, OFFEROR shall follow applicable standards, specifications (i.e. Greenbook), manuals, policies, procedures and 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 Offerors, 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 Offerors 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 or other AHJ's as applicable.
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"**  
**COMPENSATION AND PAYMENT**

**[attached behind this page]**

**EXHIBIT "C"**  
**COMPENSATION SUMMARY<sup>1</sup>**

| FISCAL YEAR               | PROJECT  | COST                   |
|---------------------------|----------|------------------------|
| FY 2024/25                | Services | \$ 145,000.00          |
| FY 2025/26                | Services | 1,200,000.00           |
| FY 2026/27                | Services | 1,100,000.00           |
| FY 2027/28                | Services | 395,000.00             |
| <b>SUBTOTAL</b>           |          | <b>2,840,000.00</b>    |
| <b>OTHER DIRECT COSTS</b> |          | <b>100,000.00</b>      |
| <b>TOTAL COSTS</b>        |          | <b>\$ 2,940,000.00</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.

**EXHIBIT "C"**  
**CALTRANS/STATE REQUIREMENTS**

**[attached behind this page]**

## EXHIBIT "C"

### CALTRANS/STATE 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. FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, Consultant shall not discriminate against any employee for employment on account 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. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section. Consultant shall include this provision in all subconsultants for Services to be provided under this Agreement.

2. Consultant and all subconconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, 12900 et seq.), and the applicable regulations promulgated thereunder (Cal. Code Regs., Title 2, 11000, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and all subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. Consultant shall, and shall require that its subconsultants, permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by State, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by State, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

4. Remedies for Willful Violation:

(a) State may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which Consultant was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that Consultant has violated the Fair Employment Practices Act.

(b) For willful violation of this Fair Employment Provision, the Commission shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by Commission in securing the goods or services hereunder shall be borne and paid for by Consultant, and Commission may deduct from any moneys due or thereafter may become due to Commission, the difference between the price named in the Agreement and the actual cost to Commission to cure Consultant's breach of this Agreement.

**2. 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.

### **3. PROMPT PAYMENT**

Consultant agrees to pay each subcontractor 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. Sections 6, Prompt Payment, of Exhibit “D” shall also apply.

### **4. RELEASE OF RETAINAGE**

No retainage will be withheld by the Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to Consultant and its subconsultants.

### **5. 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.

### **6. 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.

### **7. INVENTIONS.**

Rights to Inventions and Data Made Under a Contract or Agreement — Consultant shall comply with Federal requirements and regulations pertaining to patent rights with respect

to any discovery or invention which arises or is developed in the course of or under the Contract, and shall be in compliance with 10 CFR 600.325 and Appendix A—Patent and Data Rights to Subpart D, Part 600.

## **8. 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).

C. Energy Policy and Conservation Act (Pub. L. 94—163, 89 Stat. 871.) — Consultant shall comply with 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), which are incorporated by reference in this Contract. (10 CFR 600.236(i)(13).)

## **9. COMPLIANCE WITH ECONOMIC SANCTIONS IN RESPONSE TO RUSSIA'S ACTIONS IN UKRAINE.**

Consultant shall fully and adequately comply with California Executive Order N-6-22 (“Russian Sanctions Program”). As part of this compliance process, Consultant shall also certify compliance with the Russian Sanctions Program by completing the form located in Exhibit “E” (Russian Sanctions Certification), attached hereto and incorporated herein by reference. Consultant shall also require any subconsultants to comply with the Russian Sanctions Program and certify compliance pursuant to this Section.

## **10. ADDITIONAL FUNDING REQUIREMENTS**

The Commission may include, as part of any Task Order proposal request, additional State funding requirements applicable to the funding to be used for the relevant Task Order. Any such additional requirements shall be considered incorporated into this Agreement by reference as if fully set forth herein, and shall apply to all Services performed under the relevant Task Order.

**EXHIBIT "D"**

**FEDERAL DEPARTMENT OF TRANSPORTATION  
FHWA AND CALTRANS REQUIREMENTS**

**[attached behind this page]**



## 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 on 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. 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 Caltrans 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 22%. The goal for each Task Order, if different than the overall goal for the Agreement, may be set forth in the relevant Task Order. Participation by DBE Consultant or subconsultants shall be in accordance with information contained in Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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 Caltrans 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).

C. Energy Policy and Conservation Act (Pub. L. 94—163, 89 Stat. 871.) — Consultant shall comply with 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), which are incorporated by reference in this Contract. (10 CFR 600.236(i)(13).)

## **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"**

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

**[attached behind this page]**

**DRAFT**

## 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: \_\_\_\_\_

**EXHIBIT "F"**  
**LOBBYING ACTIVITIES DISCLOSURE**

**[attached behind this page]**

**EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES**

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<br/> <input type="checkbox"/> b. grant<br/> <input type="checkbox"/> c. cooperative agreement<br/> <input type="checkbox"/> d. loan<br/> <input type="checkbox"/> e. loan guarantee<br/> <input type="checkbox"/> f. loan insurance</p>  | <p><b>2. Status of Federal Action:</b></p> <p><input type="checkbox"/> a. bid/offer/application<br/> <input type="checkbox"/> b. initial award<br/> <input type="checkbox"/> c. post-award</p>   | <p><b>3. Report Type:</b></p> <p><input type="checkbox"/> a. initial<br/> <input type="checkbox"/> b. material change</p> <p><b>For Material Change Only:</b><br/> year _____ quarter _____<br/> 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<br/> Tier _____, if known</p> <p>Congressional District, if known _____</p>  | <p><b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b></p> <p>Congressional District, if known _____</p>  |   |
| <p><b>6. Federal Department/Agency:</b></p>   | <p><b>7. Federal Program Name/Description:</b></p> <p>CFDA Number, if applicable _____</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><br/> (If individual, last name, first name, MI)</p> <p>(attach Continuation Sheet(s) if necessary)</p>   | <p><b>11. Individuals Performing Services</b><br/> (including address if different from No. 10)<br/> (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<br/> <input type="checkbox"/> b. one-time fee<br/> <input type="checkbox"/> c. commission<br/> <input type="checkbox"/> d. contingent fee<br/> <input type="checkbox"/> e. deferred<br/> <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<br/> <input type="checkbox"/> b. in-kind; specify: nature _____<br/> 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 12:</b></p> <p>(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: <u>C. Halvorson</u></p> <p>Print Name: <u>Craig Halvorson</u></p> <p>Title: <u>Regional Managing Director/Executive Vice President</u></p> <p>Telephone No.: <u>714-404-5465</u>      Date: <u>May 28, 2024</u></p> |
| <p>Authorized for Local Reproduction<br/>Standard Form - LLL</p>  |  |   |

**Federal Use Only:**

Standard Form LLL Rev. 04-28-06

**NO LOBBYING ACTIVITIES TO REPORT**

Distribution: Orig- Local Agency Project Files


**EXHIBIT "G"**

**DBE COMMITMENT FORM**

**[attached behind this page]**

## EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: Riverside County Transportation Commission    2. Contract DBE Goal: 22%
3. Project Description: On-Call Constructability Review and Misc. Construction Management Support Services for Non-Rail Capital Projects
4. Project Location: Riverside, CA
5. Consultant's Name: Anser Advisory Management, LLC    6. Prime Certified DBE:


| 7. Description of Work, Service, or Materials Supplied   | 8. DBE Certification Number | 9. DBE Contact Information  | 10. DBE %    |
|--|-----------------------------|---|--------------|
| Environmental Compliance   | 41084                       | Balk Biological, Inc. - Michelle Balk, CEO<br>5858 Dryden Place, Suite 223, Carlsbad, CA 92008<br>760.672.4559   mbalk@balkbiological.com   | 1            |
| Land Surveying   | 38284                       | CL Surveying and Mapping, Inc. Daniel Calvillo, PLS, Vice President/CEO<br>400 East Rincon Street, Suite 202, Corona, CA 92879<br>909.484.4200   Dan@cl-survey.com  | 1            |
| Roadway/Electrical Inspection  | 39638                       | Dynamic Engineering Services, Inc. Chia-Chi Wang, Principal<br>6 Latitude Way, Suite 112, Corona, CA 92881<br>951.471.8890   ccwang@dynamicsesi.com   | 3            |
| Structures, Resident Engineering, Roadway Inspection, Change Order   | 50810                       | Enterris Associates - Anh Case, PE, Senior Vice President<br>6060 Center Drive, 10th Floor, Los Angeles, CA 90045<br>714.423.8171   Anh.case@enterrisassociates.com   | 4            |
| Structures   | 41746                       | Meroe Engineering - Darius Johnson, PE, President<br>414 Knightsbridge Way, American Canyon, CA 94503<br>415.889.0119   info@mecivil.com  | 5            |
| Utility Coordination   | 47426                       | Red Team Go - Danica Mason, President<br>817 Baird Ave. Snohomish, WA 98290<br>206.947.1992   danica@redteam-go.com   | 1            |
| Landscape/SWPPP/Roadway Inspection, Resident Engineering   | 46418                       | Reddy Engineering Services, Inc. Rafael Lopez, Principal Engineer<br>3160 Camino del Rio South, #103, San Diego, CA 92108<br>408.309.4762   rafael@reddyengineering.com   | 1            |
| <b>Local Agency to Complete this Section</b>   |                             | <b>11. TOTAL CLAIMED DBE PARTICIPATION</b>  | SEE PAGE 2 % |
| 17. Local Agency Contract Number: _____<br>18. Federal-Aid Project Number: _____<br>19. Proposed Contract Execution Date: _____<br><br>Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. |                             |   |              |
| 20. Local Agency Representative's Signature _____<br>21. Date _____<br><br>22. Local Agency Representative's Name _____<br>23. Phone _____<br><br>24. Local Agency Representative's Title _____  |                             | <b>IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.</b><br><br><div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> <br/>           _____<br/>           12. Preparer's Signature         </div> <div style="text-align: center;">           5.28.24<br/>           _____<br/>           13. Date         </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="text-align: center;">           Lucas Rathe<br/>           _____<br/>           14. Preparer's Name         </div> <div style="text-align: center;">           619-755-9596<br/>           _____<br/>           15. Phone         </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="text-align: center;">           Sr. Vice President<br/>           _____<br/>           16. Preparer's Title         </div> </div> |              |

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

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## EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

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3. Project Description: On-Call Constructability Review and Misc. Construction Management Support Services for Non-Rail Capital Projects
4. Project Location: Riverside, CA
5. Consultant's Name: Anser Advisory Management, LLC    6. Prime Certified DBE:

| 7. Description of Work, Service, or Materials Supplied   | 8. DBE Certification Number | 9. DBE Contact Information  | 10. DBE %   |
|--|-----------------------------|---|-------------|
| Environmental Compliance   | 25485                       | UltraSystems Environmental, Inc. - Betsy Lindsay, President<br>16431 Scientific Way, Irvine, CA 92618<br>949.788.4900 ext. 227   BLindsay@UltraSystems.com  | 1           |
| Resident Engineering, Labor Compliance, Landscape, ARE, Lead Inspection, Structures, Roadway/ Electrical Inspection  | 41235                       | Z&K Consultants, Inc. - Crystal Fraire, President<br>17130 Van Buren Blvd.   Suite 122   Riverside, CA 92504<br>951.310.7470   Cfraire@zandkconsultants.com   | 4           |
| Drone/Camera   | 43830                       | Zephyr UAS, Inc. dba Zephyr Rail - Janelle Patterson, President<br>725 Town & Country Road, Suite 550, Orange, CA 92868<br>714.835.6385   janelle.patterson@zurail.com  | 1           |
|  |                             |   |             |
|  |                             |   |             |
|  |                             |   |             |
|  |                             |   |             |
| <b>Local Agency to Complete this Section</b>   |                             | <b>11. TOTAL CLAIMED DBE PARTICIPATION</b>  | <b>22 %</b> |
| 17. Local Agency Contract Number: _____<br>18. Federal-Aid Project Number: _____<br>19. Proposed Contract Execution Date: _____<br><br>Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. |                             |   |             |
| 20. Local Agency Representative's Signature _____<br>21. Date _____<br><br>22. Local Agency Representative's Name _____<br>23. Phone _____<br><br>24. Local Agency Representative's Title _____  |                             | <b>IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.</b><br><br><div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <br/>           _____<br/>           12. Preparer's Signature         </div> <div style="width: 45%; text-align: right;"> <u>5/28/24</u><br/>           _____<br/>           13. Date         </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">           Lucas Rathe<br/>           _____<br/>           14. Preparer's Name         </div> <div style="width: 45%; text-align: right;"> <u>619-755-9596</u><br/>           _____<br/>           15. Phone         </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">           Sr. Vice President<br/>           _____<br/>           16. Preparer's Title         </div> </div> |             |

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# **AGENDA ITEM 6M**





| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |  |
|---|--|
| <b>DATE:</b>                                      | September 11, 2024   |
| <b>TO:</b>  | Riverside County Transportation Commission                               |
| <b>FROM:</b>                                      | John Tarascio, Senior Capital Projects Manager                           |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director   |
| <b>SUBJECT:</b>                                   | Quarterly Reporting of Contract Change Orders for Construction Contracts |

**STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Receive and file the Quarterly Report of Contract Change Orders for Construction Contracts for the three months ended June 30, 2024.

**BACKGROUND INFORMATION:**

During the past quarter, April through June 2024, the Commission has had the following projects under construction:

1. Mid County Parkway (MCP) Placentia project
2. SR-71 / SR-91 Interchange Project
3. MVMF Platform and Track Expansion
4. SR-60 Truck Lanes Project
5. 15/91 Express Lanes Connector

**DISCUSSION:**

At the direction of the Executive Committee at its March 2021 meeting, a report will be filed each quarter listing the construction contract change orders that were issued in the previous quarter. The following table summarizes the Contract Change Orders that occurred in the 2<sup>nd</sup> quarter (4<sup>th</sup> quarter of FY 2023/24).

| <b>Contractor Change Orders executed in the 2nd Quarter of CY 2024</b> |                |  |                |
|--|----------------|--|----------------|
| <u>Project</u>   | <u>CCO No.</u> | <u>Description</u>   | <u>Amount</u>  |
| MCP Placentia Project  | CCO 64         | Final Quantity Overrun/Underrun Amounts  | (\$428,770.97) |
| SR-71 / SR-91 Interchange Project                                      | CCO 15-S1      | Connector Bent 2 – Rebar Inefficiencies  | \$22,256.00    |
|  | CCO 24         | Undercrossing Widening Abutment 1 Cast-In-Drilled-Hole - Differing Site Conditions   | \$61,701.00    |
|  | CCO 38         | Graffiti Removal   | \$50,000.00    |
| I-15 Railroad Canyon Interchange Project                               | CCO 93         | Final Quantity Overrun/Underrun Amounts  | (\$604,064.00) |
| MVMF Platform and Track Expansion                                      | CCO 24         | Grated Channel Grate Change  | \$48,860.00    |
| SR-60 Truck Lanes Project  | CCO 101        | Drainage Modifications, Erosion Repairs and Crack Sealing of Wildlife Crossing Boxes | \$679,030.00   |
| 15/91 Express Lanes Connector  | CCO 11-S1      | Additional money added for Extra Maintenance Work                                    | \$50,000.00    |
|  | CCO 41         | Outside Conduit to Kapsch Cabinets   | \$11,786.00    |
|  | CCO 43         | Drainage System 212 G2 Drain Inlet (a) Wall Thickness Conflict                       | \$16,208.06    |
|  | CCO 44         | Repair of 18" Pipe   | \$5,572.76     |

**FISCAL IMPACT:**

The Contract Change Orders were executed using available contingency authorized with the construction contract for each project.

# **AGENDA ITEM 6N**



| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |   |
|---|---|
| <b>DATE:</b>                                      | September 11, 2024  |
| <b>TO:</b>  | Riverside County Transportation Commission  |
| <b>FROM:</b>                                      | Western Riverside County Programs and Projects Committee<br>Paul Mim Mack, Senior Management Analyst<br>Hector Casillas, Right of Way Manager |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director  |
| <b>SUBJECT:</b>                                   | Agreements for On-Call Right of Way Engineering and Surveying Services  |

**WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE AND STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Award the following agreements to provide on-call right of way engineering and surveying services for a three-year term, for a total aggregate amount not to exceed \$3,200,000;
  - a) Agreement No. 24-31-076-00 to David Evans and Associates, Inc.;
  - b) Agreement No. 24-31-121-00 to GUIDA;
  - c) Agreement No. 24-31-122-00 to Mark Thomas and Company, Inc.;
  - d) Agreement No. 24-31-123-00 to Psomas;
- 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 contractors under the terms of the agreements.

**BACKGROUND INFORMATION:**

Right of way engineering and surveying 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.

Right of way engineering and surveying companies provide boundary maps, monumentation maps, survey control maps, records of survey, parcel or appraisal maps, lot line adjustments, and legal descriptions and plat maps, among other services. These companies also meet the requirements of Caltrans in providing base mapping and pre-construction and post-construction monumentation.

Staff utilizes these services when acquiring property for projects or to determine property boundaries on property already owned by the Commission or RCA. Often, staff will call on these

companies to stake or mark the areas of a property that are proposed to be acquired, obtaining useful information for the appraisers, right of way agents, and the property owners. The current on-call right of way engineering and surveying services contract does not expire until July 30, 2025; however, funds have been almost completely expended, therefore, staff procured for a new on-call contract.

### **Procurement Process**

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. Evaluation criteria included elements such as qualifications of firm, staffing and project organization, project understanding and approach, and the ability to respond to the requirements set forth under the terms of a request for qualifications (RFQ).

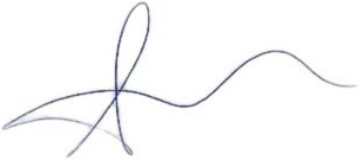
RFQ No. 24-31-076-00 for On-Call Right of Way Engineering and Surveying Services was released by staff on May 16, 2024. The RFQ was posted on the Commission's Planet Bids website, which is accessible through the Commission's website. Through Planet Bids, 54 firms downloaded the RFQ; 10 of these firms are located in Riverside County. A pre-submittal meeting was held on May 30, 2024, and attended by 12 firms. Staff responded to all questions submitted by potential proposers prior to the June 6, 2024, clarification deadline. Seven (7) firms – Albert A. Webb (Riverside); David Evans and Associates, Inc. (Ontario); GUIDA (Irvine); Mark Thomas and Company Inc. (Irvine); Michael Baker International (Temecula); MNS Engineers (Santa Barbara); and Psomas (Riverside) – submitted responsive and responsible statements of qualifications prior to the 2:00 p.m. submittal deadline on June 20, 2024. Utilizing the evaluation criteria set forth in the RFQ, the firms were evaluated and scored by an evaluation committee comprised of Commission and Riverside County Surveyor's staff.

Based on the evaluation committee's assessment of the written proposals and pursuant to the terms of the RFQ, the evaluation committee determined four firms to be the most qualified to provide on-call right of way engineering and surveying services. The evaluation committee recommends contract award to David Evans and Associates, Inc.; GUIDA; Mark Thomas and Company, Inc.; and Psomas for a three-year term, for a total aggregate amount not to exceed \$3,200,000.

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

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 contract and task orders will maximize the effectiveness of the consultants and minimize costs to the Commission.

**FISCAL IMPACT:**

| Financial Information       |  |       |                           |                    |                          |
|-----------------------------|--|-------|---------------------------|--------------------|--------------------------|
| In Fiscal Year Budget:      | Yes  | Year: | FY 2024/25<br>FY 2025/26+ | Amount:            | \$500,000<br>\$2,700,000 |
| Source of Funds:            | 2009 Measure A, State Transportation Improvement Program, various Federal and RCA reimbursements                     |       |                           | Budget Adjustment: | No                       |
| GL/Project Accounting No.:  | 623999 81403 00013 0000 262 31 81403<br>654199 81403 00013 0000 265 33 81403<br>R22001 81403 00013 0000 750 68 81403 |       |                           |                    |                          |
| Fiscal Procedures Approved: |                                   |       |                           | Date:              | 08/19/2024               |

**Attachments:**

- 1) Draft On-Call Professional Services Agreement No. 24-31-076-00 With David Evans and Associates, Inc.
- 2) Draft On-Call Professional Services Agreement No. 24-31-121-00 With GUIDA
- 3) Draft On-Call Professional Services Agreement No. 24-31-122-00 With Mark Thomas and Company, Inc.
- 4) Draft On-Call Professional Services Agreement No. 24-31-123- 00 With Psomas

|  |   |          |   |     |   |
|--|---|----------|---|-----|---|
| <i>Approved by the Western Riverside County Programs and Projects Committee on<br/>August 26, 2024</i> |   |          |   |     |   |
| In Favor:  | 9 | Abstain: | 0 | No: | 0 |





## Agreement No. 24-31-076-00

**PROFESSIONAL SERVICES AGREEMENT  
WITH PROPOSITION 1B, FTA AND FHWA FUNDING ASSISTANCE**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
DAVID EVANS AND ASSOCIATES, INC.  
FOR ON-CALL RIGHT OF WAY  
ENGINEERING AND SURVEYING SERVICES**

**Parties and Date.**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2024, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and DAVID EVANS AND ASSOCIATES, 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. A source of funding for payment for on-call professional consulting services provided under this Agreement may be State Proposition 1B funds, Federal Highway Administration Funds ("FHWA") administered by the California Department of Transportation ("Caltrans"), and/or funds from the Federal Transit Administration ("FTA").

E. Commission is the County Transportation Commission for Riverside County, with responsibility for, among other things, implementing or allocating funding for various transportation programs and projects throughout the County of Riverside ("County").

F. 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.

G. 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.

H. Consultant desires to perform and assume responsibility for the provision of certain on-call right of way engineering and surveying services in the County of Riverside, California, required by Commission, for Commission's or RCA's benefit, on the terms and conditions set forth in this Agreement. Services shall be provided 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.

I. The 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 engineering and surveying 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 fully executed 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 the Schedule of Services set forth in a Task Order. 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.

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 Federal and State process reviews. In addition, the applicable federal agency, or Caltrans, may require that prior to performance of any work for which Federal or State reimbursement is requested and provided, that said federal agency or Caltrans must give to Commission an "Authorization to Proceed".

4. Audit Procedures. Consultant and 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 23 and 24 of this Agreement.

5. Term.

5.1 This Agreement shall go into effect on the date first set forth above, contingent upon approval by Commission. This Agreement shall end three years from the date set forth above. All Task Order work should be completed within the term.

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 Joseph Wideman 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: Joseph Wideman, Kent Groh, Brian Gillooly, Jerry C. Woodrow, Rob Walker, Jeremy Schiff, Karen Rios de la Cruz, Chris Dominguez, Michael Balderston, Dan Calvillo, Bob Vasquez, Gencaga Aliyazicioglu, and Cengiz Yagcioglu or as otherwise identified in the Task Order.

9. Standard of Care; Licenses. Consultant represents and maintains that it is skilled in the professional calling necessary to perform all Services, duties and obligations required by this Agreement to fully and adequately complete the Project. Consultant shall

perform the Services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents and warrants to the Commission that its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the Commission or RCA, 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 or RCA. 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.

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, 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 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.

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. 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, 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.

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. 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, or any cost proposal included as part of a Task Order ("Cost Proposal") unless additional reimbursement is provided for by written amendment. The overhead rates included in the attached Exhibit "C" shall be fixed for the term of the Master Agreement, and shall not be subject to adjustment, unless required by the applicable funding source. 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, this Agreement or any Task Order is required, the Agreement time or actual costs reimbursable by Commission shall be adjusted by written 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.

19.2 In addition to the allowable incurred costs, Commission shall pay Consultant a fixed fee to be set forth in each Task Order ("Fixed Fee"). The Fixed Fee is nonadjustable for each Task Order, except in the event of a significant change in the Scope of Services, and such adjustment is made by written amendment.

19.3 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.

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

19.5 Progress payments shall be made monthly in arrears based on Services provided and allowable incurred costs. A pro rata portion of the Fixed Fee shall be included in the monthly progress payments. 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.

19.6 No payment shall be made prior to approval of any Services, nor for any Services performed prior to approval of this Agreement.

19.7 Consultant shall be reimbursed, as promptly as fiscal procedures will permit upon receipt by Commission's Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 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

19.8 The total amount payable by Commission, including the Fixed Fee, shall not exceed the amount set forth in each Task Order.

19.9 Commission has or will enter into four (4) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement. The other On-Call Right of Way Engineering and Surveying Services Task Order Contracts are GUIDA (24-31-121-00), Mark Thomas and Company, Inc. (24-31-122-00) and Psomas, (24-31-123-00). The total amount payable by Commission for the four Task Order Contracts shall not exceed a cumulative maximum total value of Three Million Two Hundred Thousand Dollars (\$3,200,000) ("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 Engineering and Surveying Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the On-Call Right of Way Engineering and Surveying Services Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the On-Call Right of Way Engineering and Surveying Services 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.

19.10 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.

19.11 Consultant shall not be reimbursed for any expenses unless authorized in writing by the Commission's Contract Administrator.

19.12 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.

21.1 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.

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 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.

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 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 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.

21.6 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.

21.7 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.

21.8 Consultant may not terminate this Agreement except for cause.

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, 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, FHWA, 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 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 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.

25.3 Consultant shall pay its subconsultants within ten (10) 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 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" or in a Task Order. 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 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 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.

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 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.

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

## 27. Labor Code Requirements.

### 27.1 Prevailing Wages.

(a) 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) Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Section.

(c) 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>.

(d) 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. Since 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.

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

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 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.

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 sole risk.

28.2 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 or RCA, 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 and RCA further are 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 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 or RCA.

28.4 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.

29. Indemnification. To the fullest extent permitted by law, Consultant shall defend (with counsel of Commission's choosing), 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, 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, 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, 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.

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*: \$1,000,000 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 \$2,000,000 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, RCA, 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, 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, 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 and RCA (if agreed to in a written contract or agreement) before the Commission's or RCA'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, 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.

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, 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.

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 and RCA 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.

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.

(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 neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. 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 contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project



resulting from this contract.

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 Agreement 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 "G", 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 3.23.5 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 or RCA. 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 or RCA 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 and RCA reserve 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 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.

37.2. 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.

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.

40. 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:**

David Evans and Associates, Inc.  
4141 Inland Empire Blvd.  
Suite 250  
Ontario, CA 91764  
Attn: Kent Groh

**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.

41. 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.

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

43. 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.

44. 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.

45. Provisions Applicable When State Funds or Federal Funds Are Involved. When funding for the Services under a Task Order is 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. 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.

46. 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.

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

48. 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.

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

50. Attorney Client Privilege. The Parties recognize that, during the Project, the Commission and its attorneys will engage in communication that gives rise to an attorney client privilege of confidentiality ("Confidential Communication"). Given the nature of the work done by Consultant for the Commission, it may be necessary for the Consultant to participate in Confidential Communications. To the extent that (i) the Consultant is a party to any Confidential Communication, and (ii) a third party seeks discovery of such communications, then the Consultant shall be deemed to be an agent of the Commission solely for purposes of preserving any attorney client privilege in the relevant Confidential Communication. Any such attorney client privilege shall be held by the Commission and the Consultant is not authorized to waive that privilege or, otherwise, disclose such Confidential Communication except as set forth below. This Section is intended to maintain the privilege in any privileged Confidential Communications that are (1) between and among Commission, Consultant, and Commission's attorneys; (2) between Consultant (on behalf of the Commission) and Commission's attorneys; (3) Confidential Communications that occur in Closed Session meetings wherein the Commission, the Commission's attorneys and Consultant are present; and (4) between Commission and Consultant wherein the substance of the Confidential Communication is conveyed to/from the Consultant.

Consultant may disclose a Confidential Communication to the extent such disclosure is required by legal process, by a court of competent jurisdiction or by any other governmental authority, provided that any such disclosure shall be limited to the specific part of the Confidential Communication required to be disclosed and provided that Consultant first comply with the requirements set forth in this paragraph. As soon as practicable after Consultant becomes aware that it is required, or may become required, to disclose the Confidential Communication for such reason, Consultant shall notify the Commission in writing, in order to allow the Commission to pursue legal remedies designed to limit the Confidential Communication required to be disclosed or to assure the confidential treatment of the disclosed information following its disclosure. Consultant shall cooperate with the Commission, on a reimbursable basis, to assist the Commission in limiting the scope of disclosure or assuring the confidential treatment of any disclosed information.

51. 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.

52. 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.

53. 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.

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

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

**[Signatures on following page]**

**SIGNATURE PAGE  
TO  
PROFESSIONAL SERVICES AGREEMENT  
WITH PROPOSITION 1B, FTA AND FHWA FUNDING ASSISTANCE FOR  
RIGHT OF WAY ENGINEERING AND SURVEYING SERVICES**

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

|   |   |
|---|---|
| <p><b>RIVERSIDE COUNTY<br/>TRANSPORTATION COMMISSION</b></p> <p>By: _____<br/>Aaron Hake</p><br><p><i>Approved as to Form:</i></p><br><p>By: _____<br/>Best, Best &amp; Krieger LLP<br/>General Counsel</p> | <p><b>CONSULTANT<br/>DAVID EVANS AND ASSOCIATES, INC.</b></p> <p>By: _____<br/>Signature</p> <p>_____ Name</p> <p>_____ Title</p><br><p><b>ATTEST:</b></p> <p>By: _____</p> <p>Its: _____</p> |
|---|---|

\* 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.

**TO BE INSERTED FROM RFQ:**

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

**EXHIBIT "E" - CONSULTANT DBE COMMITMENT**

**EXHIBIT "F" - FTA PROVISIONS**

**EXHIBIT "G" – LOBBYING ACTIVITIES DISCLOSURE**

**TO BE INSERTED FROM CONSULTANT PROPOSAL:**

**EXHIBIT "C"- COMPENSATION AND PAYMENT**

**DRAFT**

## SCOPE OF SERVICES

### Right of Way Engineering and Surveying Services

## SCOPE OF SERVICES

The Riverside County Transportation Commission (Commission) and the Western Riverside County Regional Conservation Authority (RCA) have procured one or more Consultants (Consultant or Right of Way Engineering and Surveying Services Consultant) to provide Right of Way Engineering and Surveying Services on an On-Call/as needed basis in support of current Commission and RCA Projects, Measure A Projects, and projects done in partnership with other agencies, pursuant to Task Orders issued in the sole discretion of the Commission and/or the RCA.

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

Such Right of Way Engineering and Surveying Services may include, but are not limited to, the following work programs, and/or comply with applicable requirements below:

1. Consultant shall provide right of way engineering and survey services including but not limited to: preparing Boundary Maps, Monumentation Maps, Survey Control Maps, Records of Survey, Lot Line Adjustments, Subdivision Maps, Legal Descriptions and Plats, Parcel Maps, Appraisal Maps, Certificates of Compliance, staking/marketing of parcels and rights of way for appraisal and utility potholing purposes, and other right of way engineering as necessary.
2. Consultant shall prepare Boundary, Monumentation, and Survey Control Maps showing all parcels and easement boundaries and their relationship to the land net monuments used to define them. In cases where the Commission is working in conjunction with the California Department of Transportation (Caltrans), these maps shall conform to the Caltrans District 8 Right of Way Engineering Quality Assurance Plan for the Preparation of Documents and Maps.
3. Consultant shall utilize appropriate land surveying and land title practices to:
  - Establish all property and easement boundaries within and overlapping the project area
  - Perform site reconnaissance and monument recovery
  - Establish or reestablish all monumentation required by state law and local regulations



- File a Record of Survey, if necessary, to comply with the Land Surveyors Act. The preparation, filing, and associated fees will be the responsibility of Consultant.

All data, maps, and documents produced by Consultant shall be subject to approval and acceptance by the Commission's or the RCA's Project Manager, and in certain cases, Caltrans. In the event of non-acceptance due to errors or omissions, Consultant shall have seven calendar days to make corrections and return maps and documents to the Commission and/or the RCA. Final acceptance will occur only after the work product has been determined to conform to the scope of work and requirements.

4. All surveying and mapping work affecting the State of California Right of Way at any location, or along any route, shall be in accordance with state law and local regulation, and the procedures and instructions contained in the Caltrans Right of Way Manual, the Caltrans Surveys Manual (Manuals), and the Caltrans District 8 Right of Way Engineering Quality Assurance Plan for the Preparation of Documents and Maps. All right of way acquired by the Commission on for state highway system projects will be subject to acceptance and transfer to the State.
5. Consultant shall appoint a Survey Manager who is a licensed Land Surveyor or Licensed Civil Engineer, authorized to practice land surveying by the State of California. The Survey Manager will be responsible for all work performed by Consultant for the Commission or the RCA.
6. Deliverables shall typically consist of one (1) electronic copy.
7. If any legal issues exist during the course of an assignment, Consultant shall request legal opinion. The Commission's or RCA's legal counsel shall render all legal opinions.
8. Consultant shall utilize the services of Commission's and/or RCA's on-call consultants supplemental work required for the effective delivery of Consultant's services to the Commission or the RCA. Fees charged by Commission's or RCA's on-call consultants shall be paid directly by the Commission or the RCA.

Any and all work submitted by the Consultant shall be reviewed by the Consultant LS/LCE and be complete and final in strict accordance with the California Board of Professional Engineers and Land Surveyors Rule 476, Subsection (e), and signed and sealed in accordance with Section 8761 of the Professional Land Surveyors Act.

As it pertains to projects affecting the State Highway System, work shall not be considered complete until Caltrans has approved the work for inclusion into the Right of Way Engineering files. Caltrans does not assume responsibility for the Consultant work after inclusion into the R/W Engineering files, Consultant shall retain responsibility for all work performed and submitted.

Lot Line Adjustments, Parcel Maps, Surveys and Legal Descriptions work required under this Scope of Work may include field surveying, legal description, map preparation and the marking of properties for utility potholing, appraisal, and boundary determination purposes or other right of way engineering required for transportation purposes. Surveys prepared in connection with Caltrans projects shall be performed in accordance with the current Manuals. Work not covered by the Manuals or not associated with Caltrans projects shall be performed in accordance with accepted professional surveying standards.

Survey points, lines, and monuments shall be established, marked, identified, and referenced. If required, Records of Survey shall be prepared and filed in accordance with Chapter 15 (Land Surveyors Act) of the Business and Professions Code. A copy of original survey documents resulting from contract work, which may include field notes, adjustment calculations, final results, and intermediate documents, may be required to be delivered and will become the property of Commission or RCA.

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**EXHIBIT "B"**

**SAMPLE TASK ORDER FORM**

Task Order No. \_\_\_\_\_

Contract: [INSERT NAME OF CONTRACT]

Consultant: [INSERT NAME OF CONSULTANT]

**The Consultant is hereby authorized to perform the following work subject to the provisions of the Contract identified above:**

**List funding sources:** \_\_\_\_\_

**List any attachments:** (Please provide if any.)

**Dollar Amount of Task Order:** Not to exceed \$ \_\_\_\_\_ .00

**Completion Date:** \_\_\_\_\_, 202\_\_

The undersigned consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Contract identified above and will accept as full payment therefore the amount shown above.

**Riverside County Transportation Commission**

**Consultant**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

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

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

**EXHIBIT "C"**  
**COMPENSATION SUMMARY<sup>1</sup>**

| FIRM                            | PROJECT TASKS/ROLE                              | COST                   |
|---------------------------------|---|------------------------|
| <b><i>Prime Consultant:</i></b> |   |                        |
| David Evans and Associates      | Right of Way Engineering and Surveying Services | \$ 3,200,000.00        |
| <b><i>Sub Consultants:</i></b>  |   |                        |
| CL Surveying and Mapping, Inc.  | Project surveyor                                | TBD                    |
| Digital Mapping, Inc.           | Aerial photogrammatry lead                      | TBD                    |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
| <b>TOTAL COSTS</b>              |   | <b>\$ 3,200,000.00</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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## EXHIBIT "D"

### FHWA/ 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 unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. 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.

C. If this Agreement is federally funded, the Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

D. If this Agreement is federally funded, the Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations,

including employment practices when the Agreement covers a program whose goal is employment.

## **2. DEBARMENT AND SUSPENSION CERTIFICATION**

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.

## **3. 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.

## **4. PROMPT PAYMENT**

Consultant agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the

prime contractor 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.

## **5. RELEASE OF RETAINAGE**

No retainage will be withheld by the Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

## **6. 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.

## **7. DBE PARTICIPATION**

Caltrans has developed a statewide DBE program pursuant to 49 C.F.R. Part 26. The requirements and procedures, as applicable, of the Caltrans DBE program are hereby incorporated by reference into this Agreement. Even if no DBE participation will be reported, Consultant shall complete Exhibits "E" of this Agreement in compliance with the Caltrans DBE program, a final utilization report in the form provided by the Commission, and any other Caltrans required DBE forms.

A. This Agreement is subject to Title 49, Part 26 of the Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." By obtaining DBE participation on this Agreement, Consultant will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. This Agreement has a 13% DBE goal, and DBE goals may be included with each task order request for proposals. If a DBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met. A DBE is a firm meeting the definition of a DBE as specified in 49 CFR.

C. DBE and other small businesses (SB), as defined in Title 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Consultant, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the contractor 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, Caltrans or the Department of Transportation deems appropriate.

D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

E. A DBE may be terminated only with prior written approval from the Commission and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting Commission consent for the termination, the prime consultant must meet the procedural requirements specified in 49 CFR 26.53(f).

## **8. DBE PARTICIPATION GENERAL INFORMATION**

It is Consultant's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Caltrans DBE program. Particular attention is directed to the following:

A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).

B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.

C. A DBE joint-venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint-venture commensurate with its ownership interest.

D. A DBE must perform a commercially useful function, pursuant to 49 CFR 26.55 that is, must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work, as more fully described in section 8 below.



E. The Consultant shall list only one subcontractor for each portion of work as defined in the Consultant's bid/proposal and all DBE subcontractors should be listed in the Consultant's bid/cost proposal list of subcontractors.

F. A Consultant who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

## **9. COMMERCIALLY USEFUL FUNCTION**

A. A DBE performs a commercially useful function 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 commercially useful function, 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. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

B. A DBE does not perform a commercially useful function 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.

C. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement 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 commercially useful function.

## **10. DBE CERTIFICATION AND DE-CERTIFICATION STATUS**

If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify the Contractor in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the Contractor in writing with the date of certification. Any changes should be reported to the Commission's Contract Administrator within 30 days.

## **11. DBE RECORDS**

A. The Contractor shall maintain records of materials purchased and/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 prime Contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the most current version of the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE)," CEM- 2402F (Exhibit 17-F in Chapter 17 of the LAPM), certified correct by the Contractor or the Contractor's authorized representative and shall be furnished to the Commission's Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Contractor when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE)" is submitted to the Commission's Contract Administrator.

a. Prior to the fifteenth of each month, the Contractor shall submit documentation to the Commission's Contract Administrator showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Commission's Contract Administrator showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

b. The Contractor shall also submit to the Commission's Contract Administrator documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans "Monthly DBE Trucking Verification," CEM-2404(F) form provided to the Contractor by the Commission's Contract Administrator.

## **12. REPORTING MATERIAL OR SUPPLIES PURCHASED FROM DBEs**

When Reporting DBE Participation, Material or Supplies purchased from DBEs may count as follows:

A. If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count 60 % of the cost of the materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, are bought, kept in stock, and regularly

sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

### **13. REPORTING PARTICIPATION OF DBE TRUCKING COMPANIES**

When Reporting DBE Participation, Participation of DBE trucking companies may count as follows:

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.

B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement.

C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.

D. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.

E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

F. For the purposes of this section, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives

the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

#### **14. 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.

#### **15. 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).

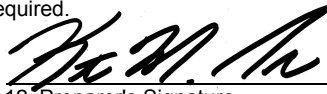
#### **16. NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

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.

EXHIBIT E

**EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT**

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

| 7. Description of Work, Service, or Materials Supplied   | 8. DBE Certification Number  | 9. DBE Contact Information                 | 10. DBE % |
|--|--|--|-----------|
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| <b>Local Agency to Complete this Section</b>   |  | <b>11. TOTAL CLAIMED DBE PARTICIPATION</b> | <b>%</b>  |
| 17. Local Agency Contract Number: _____<br>18. Federal-Aid Project Number: _____<br>19. Proposed Contract Execution Date: _____<br><br>Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. | IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.<br><br><br>12. Preparer's Signature _____ 13. Date _____<br><br>14. Preparer's Name _____ 15. Phone _____<br><br>16. Preparer's Title _____ |  |           |
| 20. Local Agency Representative's Signature _____ 21. Date _____   |  |  |           |
| 22. Local Agency Representative's Name _____ 23. Phone _____   |  |  |           |
| 24. Local Agency Representative's Title _____  |  |  |           |

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

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

## **FTA FUNDING REQUIREMENTS (Non-construction/maintenance work)**

As used herein, "RCTC" shall have the same meaning as the "Commission." The term "contract" or "Contract" shall have the same meaning as the "Agreement."

### **1. No Obligation by the Federal Government**

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

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

### **2. Program Fraud and False or Fraudulent Statements or Related Acts**

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

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

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

### **3. Access to Records**

The Consultant agrees to the following access to records requirements:

## EXHIBIT F

- a. To provide RCTC, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Consultant access to Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- b. To make available in the case of a contract for a capital project or improvement, as defined above and awarded by other than competitive bidding in accordance with 49 U.S.C. 5325(a), records related to the contract to RCTC, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- c. To maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Consultant agrees to maintain same until RCTC, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- d. To permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

### **4. Federal Changes**

The Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between RCTC and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract.

### **5. Civil Rights**

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332 and 49 CFR part 21, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

## EXHIBIT F

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623, Federal transit law at 49 U.S.C. § 5332, the Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against individuals on the basis of disability, and that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

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



## 6. FTA Disadvantaged Business Enterprise (DBE) Requirements

A. **General DBE Requirements:** In accordance with Federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), Commission has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs" (the "Regulations"). This RFP is subject to these stipulated regulations. In order to ensure that Commission achieves its overall DBE Program goals and objectives, Commission encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds.

It is the policy of the Commission to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

B. **Discrimination:** Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Any terms used herein that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations.

C. **Commission's Race-Neutral DBE Program:** A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, Commission does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. There is no FTA DBE goal on this Project.

Consultant shall not be required to achieve a specific level of DBE participation as a condition of contract compliance in the performance of this DOT-assisted contract. However, Consultant shall adhere to race-neutral DBE participation commitment(s) made at the time of award.

D. **Race-Neutral DBE Submissions and Ongoing Reporting Requirements (Post-Award):** At termination of the Contract, the successful Consultant shall complete and submit to

## EXHIBIT F

Commission a “DBE Race-Neutral Participation Listing” in the form provided by Commission. In the event DBE(s) are utilized in the performance of the Agreement, Consultant shall comply with applicable reporting requirements.

E. Performance of DBE Subconsultants: DBE subconsultants listed by Consultant in its “DBE Race-Neutral Participation Listing” submitted at the time of proposal shall perform the work and supply the materials for which they are listed, unless Consultant has received prior written authorization from Commission to perform the work with other forces or to obtain the materials from other sources. Consultant shall provide written notification to Commission in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

F. DBE Certification Status: If a listed DBE subconsultant is decertified during the life of this Agreement, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a non-DBE subconsultant becomes a certified DBE during the life of this Agreement, the DBE subconsultant shall notify Consultant in writing with the date of certification. Consultant shall furnish the written documentation to Commission in a timely manner. Consultant shall include this requirement in all subcontracts.

G. Consultant’s Assurance Clause Regarding Non-Discrimination: In compliance with State and Federal anti-discrimination laws, Consultant shall affirm that it will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, Consultant shall affirm that they will consider, and utilize subconsultants and vendors, in a manner consistent with non-discrimination objectives.

H. Violations: Failure by the selected Consultant(s) to carry out these requirements shall be a material breach of the contract to be awarded pursuant to this RFP, which may result in the termination of the contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the Consultant from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

I. Prompt Payment: Consultant shall pay its subconsultants for satisfactory performance of their contracts no later than 30 days from receipt of each payment Commission makes to the Consultant. 49 C.F.R. § 26.29(a), unless a shorter period is provided in the contract.

J. Compliance with DBE Requirements Contained in FTA Provisions: Consultant shall comply with all DBE reporting and other requirements contained in this Agreement.

## **7. Incorporation of Federal Transit Administration (FTA) Terms**

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

## **8. Debarment and Suspension.**

The Consultant agrees to the following:

(1) It will comply with the following requirements of 2 CFR Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200.

(2) It will not enter into any "covered transaction" (as that phrase is defined at 2 CFR §§ 180.220 and 1200.220) with any subconsultant whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by— (i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200; (ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180; and (iii) Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended recipients or third party participants.

(3) It will review the U.S. GSA "System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs," if required by U.S. DOT regulations, 2 CFR Part 1200.

## **9. ADA Access Requirements**

The Consultant shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794; 49 USC Section 5301(d).

## **10. Fly America**

To the extent applicable to the Services, the Consultant agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of Federal funds and their consultants are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of

compliance with the Fly America requirements. The Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

### **11. Cargo Preference - Use of United States-Flag Vessels**

To the extent applicable to the Services, the Consultant agrees:

1. To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
2. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Consultant in the case of a subconsultant's bill-of-lading.)
3. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**11. Buy America – Not applicable.**

**12. Employment Provisions**

To the extent applicable to the Services, Consultant shall comply with the following:

- A. Equal Employment Opportunity — Not applicable.
- B. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c) — Not applicable.
- C. Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333) —Not applicable.

#### **D. Release of Retainage**

No retainage will be withheld by the RCTC from progress payments due Consultant. Retainage by Consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating Consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions 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 or deficient subconsultant performance, or noncompliance by a subconsultant.

### **13. Termination for Convenience**

RCTC may terminate the Agreement for convenience in accordance with the terms of the Agreement.

After such termination, the Consultant shall submit a final termination settlement proposal to RCTC as directed. If the Consultant fails to submit a proposal within the time allowed, RCTC may determine, on the basis of information available, the amount, if any due the Consultant because of the termination and shall pay the amount determined. After the Consultant's proposal is received, RCTC and Consultant shall negotiate a fair and equitable settlement and the contract will be modified to reflect the negotiated agreement. If agreement cannot be reached, RCTC may issue a final determination and pay the amount determined. If the Consultant does not agree with this final determination or the determination resulting from the lack of timely submission of a proposal, the Consultant may appeal under the Disputes clause.

### **14. Administrative and Contractual Remedies on Breach; Termination for Cause**

a. The Consultant may be declared in breach of this Agreement ("Breach") if the Consultant fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or if the Consultant fails to perform any of the other provisions of the contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms. In case of any of the foregoing, RCTC shall notify the Consultant of the Breach, and the Consultant shall have a period of ten (10) days (or such longer period as RCTC may authorize in writing) after receipt of notice from RCTC to cure the Breach.

b. RCTC may, by written notice of termination to the Consultant specifying the effective date thereof, terminate the whole or any part of this contract, in the case of a Breach that is not cured within the timeframe set forth in (a) above ("Uncured Breach").

c. If the contract is terminated in whole or in part for an Uncured Breach, RCTC may procure upon such terms and in such manner as RCTC may deem appropriate, supplies or services similar to those so terminated, or may complete the services with its own forces. The Consultant shall be liable to RCTC for any excess costs for such similar supplies or services, and for any other costs incurred by RCTC as a result of the Uncured Breach. The Consultant shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

d. Except with respect to defaults of Subconsultants, the Consultant shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Consultant. If the failure to perform is caused by the default of a Subconsultant, and if such default arises out of causes beyond the control of both the Consultant and the Subconsultant, and without the fault or negligence of either of them, the Consultant shall not be liable for any excess costs for failure to perform, unless the supplies or

services to be furnished by the Subconsultant were obtainable from other sources in sufficient time to permit the Consultant to meet the required project completion schedule.

e. Payment for completed services or supplies delivered to and accepted by RCTC shall be at the contract price. RCTC may withhold from amounts otherwise due the Consultant for such completed services or supplies such sum as RCTC determines to be necessary to protect RCTC against loss because of outstanding liens of claims of former lien holders, or to reimburse RCTC for any other costs related to the Uncured Breach.

f. If, after notice of termination of this contract for cause, it is determined for any reason that an Uncured Breach did not exist, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the provisions for termination for convenience of RCTC.

g. The rights and remedies of RCTC provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this contract including, but not limited to, the right to specific performance.

h. Notwithstanding the above, RCTC may, without providing an opportunity to cure, terminate the contract in accordance with the timeframe set forth in Section 17 of the contract, if RCTC determines such action is in its best interest based on the nature of the Breach. Such actions shall not limit any of RCTC's remedies set forth above.

## **16. Disputes**

a. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by supplemental agreement shall be decided by RCTC's Deputy Executive Director, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Consultant. The decision of the RCTC Deputy Executive Director shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, Consultant mails or otherwise furnishes to the RCTC Deputy Executive Director a written appeal addressed to RCTC's Executive Director. The decision of RCTC Executive Director or duly authorized representative for the determination of such appeals shall be final and conclusive.

b. The provisions of this Paragraph shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged, provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Paragraph, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

c. Pending final decision of a dispute hereunder, Consultant shall proceed diligently with the performance of this Agreement and in accordance with the decision of RCTC's Deputy Executive Director. This "Disputes" clause does not preclude consideration of questions of law in connection

with decisions provided for above. Nothing in this Agreement, however, shall be construed as making final the decision of any RCTC official or representative on a question of law, which questions shall be settled in accordance with the laws of the State of California.

### **17. Lobbying**

See the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Consultants who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Offeror shall complete and submit with its bid/proposal the attached Certification Regarding Lobbying, and if applicable, the Standard Form-LLL, "Disclosure Form to Report Lobbying."

### **18. Energy Conservation**

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

### **19. Clean Water**

a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Consultant agrees to report each violation to RCTC and understands and agrees that RCTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

d. The Consultant further agrees that:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

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

## 20. Clean Air

a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Consultant agrees to report each violation to RCTC and understands and agrees that RCTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

b. The Consultant further agrees that:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

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

## 21. Recycled Products

Recovered Materials - The Consultant agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## 21. SPECIAL PROVISION FOR PROMOTING COVID-19 SAFETY

### Section 49. Centers for Disease Control and Prevention Order on Requirements for Persons to Wear Masks While on Conveyances and at Transportation Hubs.

(a) *Compliance with CDC Mask Order.* The Centers for Disease Control and Prevention (“CDC”) Order of January 29, 2021, titled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (“CDC Mask Order”), applies to this Agreement. One of the objectives of the CDC Mask Order is “[m]aintaining a safe and operating transportation system.” Consultant agrees that it will comply, and will require all subconsultants to comply, with the CDC Mask Order, to the extent the CDC Mask Order remains in effect.

(b) *Enforcement for non-compliance.* Consultant agrees that FTA and RCTC may take enforcement action for non-compliance with the CDC Mask Order, to the extent the CDC Mask Order remains in effect, including: (1) enforcement actions authorized by 49 U.S.C. § 5329(g); (2) referring Consultant to the CDC or other Federal authority for enforcement action; (3) enforcement actions authorized by 2 CFR §§ 200.339 – .340; and (4) any other enforcement action authorized by Federal law or regulation.



## 22. Safe Operation of Motor Vehicles

Pursuant to Federal Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party consultant to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

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

## 23. Notification to FTA.

- a. If a current or prospective legal matter that may affect the Federal Government emerges, the Consultant must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which this Agreement is being performed. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- b. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- c. *Additional Notice to U.S. DOT Inspector General.* The Consultant must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Commission located, if Consultant has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Consultant. In this paragraph, “promptly” means to refer information without delay and without change.

**24. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

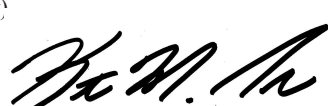
Consultant shall not contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system funded under this Contract. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

DRAFT

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

|  |   |   |
|--|---|---|
| <b>1. Type of Federal Action:</b><br><input type="checkbox"/> a. contract<br><input type="checkbox"/> b. grant<br><input type="checkbox"/> c. cooperative agreement<br><input type="checkbox"/> d. loan<br><input type="checkbox"/> e. loan guarantee<br><input type="checkbox"/> f. loan insurance  | <b>2. Status of Federal Action:</b><br><input type="checkbox"/> a. bid/offer/application<br><input type="checkbox"/> b. initial award<br><input type="checkbox"/> c. post-award   | <b>3. Report Type:</b><br><input type="checkbox"/> a. initial<br><input type="checkbox"/> b. material change<br><br><b>For Material Change Only:</b><br>year _____ quarter _____<br>date of last report _____ |
| <b>4. Name and Address of Reporting Entity</b><br><br><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee<br>Tier _____, if known<br><br>Congressional District, if known _____   | <b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b><br><br>Congressional District, if known _____  |   |
| <b>6. Federal Department/Agency:</b> _____   | <b>7. Federal Program Name/Description:</b><br>CFDA Number, if applicable _____   |   |
| <b>8. Federal Action Number, if known:</b> _____   | <b>9. Award Amount, if known:</b> _____   |   |
| <b>10. Name and Address of Lobby Entity</b><br>(If individual, last name, first name, MI) _____<br><br>(attach Continuation Sheet(s) if necessary)   | <b>11. Individuals Performing Services</b><br>(including address if different from No. 10)<br>(last name, first name, MI) _____<br><br>(attach Continuation Sheet(s) if necessary)  |   |
| <b>12. Amount of Payment (check all that apply)</b><br>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned   | <b>14. Type of Payment (check all that apply)</b><br><input type="checkbox"/> a. retainer<br><input type="checkbox"/> b. one-time fee<br><input type="checkbox"/> c. commission<br><input type="checkbox"/> d. contingent fee<br><input type="checkbox"/> e. deferred<br><input type="checkbox"/> f. other, specify _____ |   |
| <b>13. Form of Payment (check all that apply):</b><br><input type="checkbox"/> a. cash<br><input type="checkbox"/> b. in-kind; specify: nature _____<br>Value _____  |   |   |
| <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 12:</b><br><br>(attach Continuation Sheet(s) if necessary)  |   |   |
| <b>16. Continuation Sheet(s) attached:</b> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>   | Signature: <br>_____<br>Print Name: Kent Groh, PLS<br>_____<br>Title: Senior Associate<br>_____<br>Telephone No.: 909.481.5750      Date: 6/20/2024  |   |
| <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> |   |   |
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EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

|  |                                   |                                     |   |                                  |                         |
|--|-----------------------------------|-------------------------------------|---|----------------------------------|-------------------------|
| <b>1. Type of Federal Action:</b>  |                                   | <b>2. Status of Federal Action:</b> |   | <b>3. Report Type:</b>           |                         |
| <input type="checkbox"/>   | a. contract                       | <input type="checkbox"/>            | a. bid/offer/application  | <input type="checkbox"/>         | a. initial              |
| <input type="checkbox"/>   | b. grant                          | <input type="checkbox"/>            | b. initial award  | <input type="checkbox"/>         | b. material change      |
| <input type="checkbox"/>   | c. cooperative agreement          | <input type="checkbox"/>            | c. post-award   | <b>For Material Change Only:</b> |                         |
| <input type="checkbox"/>   | d. loan                           | year _____ quarter _____            |   |                                  |                         |
| <input type="checkbox"/>   | e. loan guarantee                 | date of last report _____           |   |                                  |                         |
| <input type="checkbox"/>   | f. loan insurance                 |                                     |   |                                  |                         |
| <b>4. Name and Address of Reporting Entity</b>   |                                   |                                     | <b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>                                    |                                  |                         |
| <input type="checkbox"/>   | Prime                             | <input type="checkbox"/>            | Subawardee  |                                  |                         |
| Tier _____, if known   |                                   |                                     | Congressional District, if known  |                                  |                         |
| <b>6. Federal Department/Agency:</b>   |                                   |                                     | <b>7. Federal Program Name/Description:</b>   |                                  |                         |
|  |                                   |                                     | CFDA Number, if applicable _____  |                                  |                         |
| <b>8. Federal Action Number, if known:</b>   |                                   |                                     | <b>9. Award Amount, if known:</b>   |                                  |                         |
|  |                                   |                                     |   |                                  |                         |
| <b>10. Name and Address of Lobby Entity</b><br>(If individual, last name, first name, MI)  |                                   |                                     | <b>11. Individuals Performing Services</b><br>(including address if different from No. 10)<br>(last name, first name, MI) |                                  |                         |
|  |                                   |                                     |   |                                  |                         |
| (attach Continuation Sheet(s) if necessary)  |                                   |                                     |   |                                  |                         |
| <b>12. Amount of Payment (check all that apply)</b>  |                                   |                                     | <b>14. Type of Payment (check all that apply)</b>   |                                  |                         |
| \$ _____   | <input type="checkbox"/>          | actual                              | <input type="checkbox"/>  | <input type="checkbox"/>         | a. retainer             |
|  | <input type="checkbox"/>          | planned                             | <input type="checkbox"/>  | <input type="checkbox"/>         | b. one-time fee         |
| <b>13. Form of Payment (check all that apply):</b>   |                                   |                                     | <input type="checkbox"/>  | <input type="checkbox"/>         | c. commission           |
| <input type="checkbox"/>   | a. cash                           |                                     | <input type="checkbox"/>  | <input type="checkbox"/>         | d. contingent fee       |
| <input type="checkbox"/>   | b. in-kind; specify: nature _____ |                                     | <input type="checkbox"/>  | <input type="checkbox"/>         | e. deferred             |
|  | Value _____                       |                                     | <input type="checkbox"/>  | <input type="checkbox"/>         | f. other, specify _____ |
| <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 12:</b>   |                                   |                                     |   |                                  |                         |
| (attach Continuation Sheet(s) if necessary)  |                                   |                                     |   |                                  |                         |
| <b>16. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/></b>  |                                   |                                     |   |                                  |                         |
| <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> |                                   |                                     | Signature: <u><i>Daniel A. Calvillo</i></u>   |                                  |                         |
|  |                                   |                                     | Print Name: <u>Daniel Calvillo</u>  |                                  |                         |
|  |                                   |                                     | Title: <u>Vice President/ CFO</u>   |                                  |                         |
|  |                                   |                                     | Telephone No.: <u>(909) 484-4200</u> Date: <u>6/12/24</u>   |                                  |                         |
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EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

**1. Type of Federal Action:**

a. contract  
 b. grant  
 c. cooperative agreement  
 d. loan  
 e. loan guarantee  
 f. loan insurance

**2. Status of Federal Action:**

a. bid/offer/application  
 b. initial award  
 c. post-award

**3. Report Type:**

a. initial  
 b. material change

**For Material Change Only:**  
 year \_\_\_\_\_ quarter \_\_\_\_\_  
 date of last report \_\_\_\_\_

**4. Name and Address of Reporting Entity**

Prime  Subawardee  
 Tier \_\_\_\_\_, if known

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**

Congressional District, if known \_\_\_\_\_

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**

CFDA Number, if applicable \_\_\_\_\_

**8. Federal Action Number, if known:**

**9. Award Amount, if known:**

**10. Name and Address of Lobby Entity**  
 (If individual, last name, first name, MI)

**11. Individuals Performing Services**  
 (including address if different from No. 10)  
 (last name, first name, MI)

(attach Continuation Sheet(s) if necessary)

**12. Amount of Payment (check all that apply)**

\$ \_\_\_\_\_  actual  planned

**13. Form of Payment (check all that apply):**

a. cash  
 b. in-kind; specify: nature \_\_\_\_\_  
 Value \_\_\_\_\_

**14. Type of Payment (check all that apply)**

a. retainer  
 b. one-time fee  
 c. commission  
 d. contingent fee  
 e. deferred  
 f. other, specify \_\_\_\_\_

**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 12:**

(attach Continuation Sheet(s) if necessary)

**16. Continuation Sheet(s) attached:** Yes  No

**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.**

Signature: Liliana Aliyazicioglu  
 Print Name: Liliana Aliyazicioglu  
 Title: President & CEO  
 Telephone No.: 714-968-5459 Date: 05/29/2024

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## Agreement No. 24-31-121-00

**PROFESSIONAL SERVICES AGREEMENT  
WITH PROPOSITION 1B, FTA AND FHWA FUNDING ASSISTANCE**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
GUIDA  
FOR ON-CALL RIGHT OF WAY  
ENGINEERING AND SURVEYING SERVICES**

**Parties and Date.**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2024, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and GUIDA ("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 on-call professional consulting services provided under this Agreement may be State Proposition 1B funds, Federal Highway Administration Funds ("FHWA") administered by the California Department of Transportation ("Caltrans"), and/or funds from the Federal Transit Administration ("FTA").

E. Commission is the County Transportation Commission for Riverside County, with responsibility for, among other things, implementing or allocating funding for various transportation programs and projects throughout the County of Riverside ("County").

F. 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.

G. 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.

H. Consultant desires to perform and assume responsibility for the provision of certain on-call right of way engineering and surveying services in the County of Riverside, California, required by Commission, for Commission's or RCA's benefit, on the terms and conditions set forth in this Agreement. Services shall be provided 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.

I. The 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 engineering and surveying 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 fully executed 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 the Schedule of Services set forth in a Task Order. 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.

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 Federal and State process reviews. In addition, the applicable federal agency, or Caltrans, may require that prior to performance of any work for which Federal or State reimbursement is requested and provided, that said federal agency or Caltrans must give to Commission an "Authorization to Proceed".

4. Audit Procedures. Consultant and 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 23 and 24 of this Agreement.

5. Term.

5.1 This Agreement shall go into effect on the date first set forth above, contingent upon approval by Commission. This Agreement shall end three years from the date set forth above. All Task Order work should be completed within the term.

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 Tom Pilarski 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: Tom Pilarski, Bernie McInally, Lisa Spivak, Justin Height, Tim Fettig, Rob Stevenson, and Daniel Calvillo or as otherwise identified in the Task Order.

9. Standard of Care; Licenses. Consultant represents and maintains that it is skilled in the professional calling necessary to perform all Services, duties and obligations required by this Agreement to fully and adequately complete the Project. Consultant shall perform the Services and duties in conformance to and consistent with the standards

generally recognized as being employed by professionals in the same discipline in the State of California. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents and warrants to the Commission that its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the Commission or RCA, 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 or RCA. 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.

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, 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 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.

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. 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, 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.

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. 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, or any cost proposal included as part of a Task Order ("Cost Proposal") unless additional reimbursement is provided for by written amendment. The overhead rates included in the attached Exhibit "C" shall be fixed for the term of the Master Agreement, and shall not be subject to adjustment, unless required by the applicable funding source. 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, this Agreement or any Task Order is required, the Agreement time or actual costs reimbursable by Commission shall be adjusted by written 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.

19.2 In addition to the allowable incurred costs, Commission shall pay Consultant a fixed fee to be set forth in each Task Order (“Fixed Fee”). The Fixed Fee is nonadjustable for each Task Order, except in the event of a significant change in the Scope of Services, and such adjustment is made by written amendment.

19.3 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.

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

19.5 Progress payments shall be made monthly in arrears based on Services provided and allowable incurred costs. A pro rata portion of the Fixed Fee shall be included in the monthly progress payments. 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.

19.6 No payment shall be made prior to approval of any Services, nor for any Services performed prior to approval of this Agreement.

19.7 Consultant shall be reimbursed, as promptly as fiscal procedures will permit upon receipt by Commission’s Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 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

19.8 The total amount payable by Commission, including the Fixed Fee, shall not exceed the amount set forth in each Task Order.

19.9 Commission has or will enter into four (4) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement. The other On-Call Right of Way Engineering and Surveying Services Task Order Contracts are David Evans and Associates (24-31-076-00), Mark Thomas and Company, Inc. (24-31-122-00) and Psomas, (24-31-123-00). The total amount payable by Commission for the four Task Order Contracts shall not exceed a cumulative maximum total value of Three Million Two Hundred Thousand Dollars (\$3,200,000) ("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 Engineering and Surveying Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the On-Call Right of Way Engineering and Surveying Services Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the On-Call Right of Way Engineering and Surveying Services 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.

19.10 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.

19.11 Consultant shall not be reimbursed for any expenses unless authorized in writing by the Commission's Contract Administrator.

19.12 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.

21.1 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.

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 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.

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 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 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.

21.6 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.

21.7 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.

21.8 Consultant may not terminate this Agreement except for cause.

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, 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, FHWA, 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 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 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.

25.3 Consultant shall pay its subconsultants within ten (10) 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 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" or in a Task Order. 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 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 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.

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 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.

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

## 27. Labor Code Requirements.

### 27.1 Prevailing Wages.

(a) 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) Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Section.

(c) 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>.

(d) 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. Since 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.

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

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 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.

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 sole risk.

28.2 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 or RCA, 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 and RCA further are 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 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 or RCA.

28.4 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.

29. Indemnification. To the fullest extent permitted by law, Consultant shall defend (with counsel of Commission's choosing), 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, 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, 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, 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.

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*: \$1,000,000 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 \$2,000,000 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, RCA, 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, 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, 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 and RCA (if agreed to in a written contract or agreement) before the Commission's or RCA'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, 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.

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, 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.

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 and RCA 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.

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.

(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 neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. 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 contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project

resulting from this contract.

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 Agreement 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 "G", 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 3.23.5 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 or RCA. 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 or RCA 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 and RCA reserve 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 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.



37.2. 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.

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.

40. 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:**

GUIDA  
220 Commerce  
Suite 150  
Irvine, CA 92602  
Attn: Bernie McInally

**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.

41. 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.

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

43. 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.

44. 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.

45. Provisions Applicable When State Funds or Federal Funds Are Involved. When funding for the Services under a Task Order is 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. 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.

46. 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.

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

48. 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.

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

50. Attorney Client Privilege. The Parties recognize that, during the Project, the Commission and its attorneys will engage in communication that gives rise to an attorney client privilege of confidentiality ("Confidential Communication"). Given the nature of the work done by Consultant for the Commission, it may be necessary for the Consultant to participate in Confidential Communications. To the extent that (i) the Consultant is a party to any Confidential Communication, and (ii) a third party seeks discovery of such communications, then the Consultant shall be deemed to be an agent of the Commission solely for purposes of preserving any attorney client privilege in the relevant Confidential Communication. Any such attorney client privilege shall be held by the Commission and the Consultant is not authorized to waive that privilege or, otherwise, disclose such Confidential Communication except as set forth below. This Section is intended to maintain the privilege in any privileged Confidential Communications that are (1) between and among Commission, Consultant, and Commission's attorneys; (2) between Consultant (on behalf of the Commission) and Commission's attorneys; (3) Confidential Communications that occur in Closed Session meetings wherein the Commission, the Commission's attorneys and Consultant are present; and (4) between Commission and Consultant wherein the substance of the Confidential Communication is conveyed to/from the Consultant.

Consultant may disclose a Confidential Communication to the extent such disclosure is required by legal process, by a court of competent jurisdiction or by any other governmental authority, provided that any such disclosure shall be limited to the specific part of the Confidential Communication required to be disclosed and provided that Consultant first comply with the requirements set forth in this paragraph. As soon as practicable after Consultant becomes aware that it is required, or may become required, to disclose the Confidential Communication for such reason, Consultant shall notify the Commission in writing, in order to allow the Commission to pursue legal remedies designed to limit the Confidential Communication required to be disclosed or to assure the confidential treatment of the disclosed information following its disclosure. Consultant shall cooperate with the Commission, on a reimbursable basis, to assist the Commission in limiting the scope of disclosure or assuring the confidential treatment of any disclosed information.

51. 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.

52. 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.

53. 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.

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

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

**[Signatures on following page]**

**SIGNATURE PAGE  
TO  
PROFESSIONAL SERVICES AGREEMENT  
WITH PROPOSITION 1B, FTA AND FHWA FUNDING ASSISTANCE FOR  
RIGHT OF WAY ENGINEERING AND SURVEYING SERVICES**

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

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| <p><b>RIVERSIDE COUNTY<br/>TRANSPORTATION COMMISSION</b></p> <p>By: _____<br/>Aaron Hake</p> <p><i>Approved as to Form:</i></p> <p>By: _____<br/>Best, Best &amp; Krieger LLP<br/>General Counsel</p> | <p><b>CONSULTANT<br/>GUIDA</b></p> <p>By: _____<br/>Signature</p> <p>_____ Name</p> <p>_____ Title</p> <p><b>ATTEST:</b></p> <p>By: _____</p> <p>Its: _____</p> |
|---|---|

\* 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.

**TO BE INSERTED FROM RFQ:**

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

**EXHIBIT "E" - CONSULTANT DBE COMMITMENT**

**EXHIBIT "F" - FTA PROVISIONS**

**EXHIBIT "G" – LOBBYING ACTIVITIES DISCLOSURE**

**TO BE INSERTED FROM CONSULTANT PROPOSAL:**

**EXHIBIT "C"- COMPENSATION AND PAYMENT**

**DRAFT**

## SCOPE OF SERVICES

### Right of Way Engineering and Surveying Services

## SCOPE OF SERVICES

The Riverside County Transportation Commission (Commission) and the Western Riverside County Regional Conservation Authority (RCA) have procured one or more Consultants (Consultant or Right of Way Engineering and Surveying Services Consultant) to provide Right of Way Engineering and Surveying Services on an On-Call/as needed basis in support of current Commission and RCA Projects, Measure A Projects, and projects done in partnership with other agencies, pursuant to Task Orders issued in the sole discretion of the Commission and/or the RCA.

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

Such Right of Way Engineering and Surveying Services may include, but are not limited to, the following work programs, and/or comply with applicable requirements below:

1. Consultant shall provide right of way engineering and survey services including but not limited to: preparing Boundary Maps, Monumentation Maps, Survey Control Maps, Records of Survey, Lot Line Adjustments, Subdivision Maps, Legal Descriptions and Plats, Parcel Maps, Appraisal Maps, Certificates of Compliance, staking/marketing of parcels and rights of way for appraisal and utility potholing purposes, and other right of way engineering as necessary.
2. Consultant shall prepare Boundary, Monumentation, and Survey Control Maps showing all parcels and easement boundaries and their relationship to the land net monuments used to define them. In cases where the Commission is working in conjunction with the California Department of Transportation (Caltrans), these maps shall conform to the Caltrans District 8 Right of Way Engineering Quality Assurance Plan for the Preparation of Documents and Maps.
3. Consultant shall utilize appropriate land surveying and land title practices to:
  - Establish all property and easement boundaries within and overlapping the project area
  - Perform site reconnaissance and monument recovery
  - Establish or reestablish all monumentation required by state law and local regulations

- File a Record of Survey, if necessary, to comply with the Land Surveyors Act. The preparation, filing, and associated fees will be the responsibility of Consultant.

All data, maps, and documents produced by Consultant shall be subject to approval and acceptance by the Commission's or the RCA's Project Manager, and in certain cases, Caltrans. In the event of non-acceptance due to errors or omissions, Consultant shall have seven calendar days to make corrections and return maps and documents to the Commission and/or the RCA. Final acceptance will occur only after the work product has been determined to conform to the scope of work and requirements.

4. All surveying and mapping work affecting the State of California Right of Way at any location, or along any route, shall be in accordance with state law and local regulation, and the procedures and instructions contained in the Caltrans Right of Way Manual, the Caltrans Surveys Manual (Manuals), and the Caltrans District 8 Right of Way Engineering Quality Assurance Plan for the Preparation of Documents and Maps. All right of way acquired by the Commission on for state highway system projects will be subject to acceptance and transfer to the State.
5. Consultant shall appoint a Survey Manager who is a licensed Land Surveyor or Licensed Civil Engineer, authorized to practice land surveying by the State of California. The Survey Manager will be responsible for all work performed by Consultant for the Commission or the RCA.
6. Deliverables shall typically consist of one (1) electronic copy.
7. If any legal issues exist during the course of an assignment, Consultant shall request legal opinion. The Commission's or RCA's legal counsel shall render all legal opinions.
8. Consultant shall utilize the services of Commission's and/or RCA's on-call consultants supplemental work required for the effective delivery of Consultant's services to the Commission or the RCA. Fees charged by Commission's or RCA's on-call consultants shall be paid directly by the Commission or the RCA.

Any and all work submitted by the Consultant shall be reviewed by the Consultant LS/LCE and be complete and final in strict accordance with the California Board of Professional Engineers and Land Surveyors Rule 476, Subsection (e), and signed and sealed in accordance with Section 8761 of the Professional Land Surveyors Act.

As it pertains to projects affecting the State Highway System, work shall not be considered complete until Caltrans has approved the work for inclusion into the Right of Way Engineering files. Caltrans does not assume responsibility for the Consultant work after inclusion into the R/W Engineering files, Consultant shall retain responsibility for all work performed and submitted.

Lot Line Adjustments, Parcel Maps, Surveys and Legal Descriptions work required under this Scope of Work may include field surveying, legal description, map preparation and the marking of properties for utility potholing, appraisal, and boundary determination purposes or other right of way engineering required for transportation purposes. Surveys prepared in connection with Caltrans projects shall be performed in accordance with the current Manuals. Work not covered by the Manuals or not associated with Caltrans projects shall be performed in accordance with accepted professional surveying standards.

Survey points, lines, and monuments shall be established, marked, identified, and referenced. If required, Records of Survey shall be prepared and filed in accordance with Chapter 15 (Land Surveyors Act) of the Business and Professions Code. A copy of original survey documents resulting from contract work, which may include field notes, adjustment calculations, final results, and intermediate documents, may be required to be delivered and will become the property of Commission or RCA.

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**EXHIBIT "B"**

**SAMPLE TASK ORDER FORM**

Task Order No. \_\_\_\_\_

Contract: [INSERT NAME OF CONTRACT]

Consultant: [INSERT NAME OF CONSULTANT]

**The Consultant is hereby authorized to perform the following work subject to the provisions of the Contract identified above:**

**List funding sources:** \_\_\_\_\_

**List any attachments:** (Please provide if any.)

**Dollar Amount of Task Order:** Not to exceed \$ \_\_\_\_\_ .00

**Completion Date:** \_\_\_\_\_, 202\_\_

The undersigned consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Contract identified above and will accept as full payment therefore the amount shown above.

**Riverside County Transportation Commission**

**Consultant**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

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

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

**EXHIBIT "C"**  
**COMPENSATION SUMMARY<sup>1</sup>**

| FIRM                            | PROJECT TASKS/ROLE                              | COST                   |
|---------------------------------|---|------------------------|
| <i><b>Prime Consultant:</b></i> |   |                        |
| GUIDA                           | Right of Way Engineering and Surveying Services | \$ 3,200,000.00        |
| <i><b>Sub Consultants:</b></i>  |   |                        |
| CL Surveying and Mapping, Inc,  | Project Surveyor                                | TBD                    |
| Digital Mapping, Inc.           | Aerial Photogrammatry Lead                      | TBD                    |
| T2 Utility Engineers            | Subsurface Utility Engineering Specialist       | TBD                    |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
| <b>TOTAL COSTS</b>              |   | <b>\$ 3,200,000.00</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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## EXHIBIT "D"

### FHWA/ 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 unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. 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.

C. If this Agreement is federally funded, the Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

D. If this Agreement is federally funded, the Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations,

including employment practices when the Agreement covers a program whose goal is employment.

## **2. DEBARMENT AND SUSPENSION CERTIFICATION**

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.

## **3. 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.

## **4. PROMPT PAYMENT**

Consultant agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the

prime contractor 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.

## **5. RELEASE OF RETAINAGE**

No retainage will be withheld by the Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

## **6. 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.

## **7. DBE PARTICIPATION**

Caltrans has developed a statewide DBE program pursuant to 49 C.F.R. Part 26. The requirements and procedures, as applicable, of the Caltrans DBE program are hereby incorporated by reference into this Agreement. Even if no DBE participation will be reported, Consultant shall complete Exhibits "E" of this Agreement in compliance with the Caltrans DBE program, a final utilization report in the form provided by the Commission, and any other Caltrans required DBE forms.

A. This Agreement is subject to Title 49, Part 26 of the Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." By obtaining DBE participation on this Agreement, Consultant will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. This Agreement has a 13% DBE goal, and DBE goals may be included with each task order request for proposals. If a DBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met. A DBE is a firm meeting the definition of a DBE as specified in 49 CFR.

C. DBE and other small businesses (SB), as defined in Title 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Consultant, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the contractor 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, Caltrans or the Department of Transportation deems appropriate.

D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

E. A DBE may be terminated only with prior written approval from the Commission and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting Commission consent for the termination, the prime consultant must meet the procedural requirements specified in 49 CFR 26.53(f).

## **8. DBE PARTICIPATION GENERAL INFORMATION**

It is Consultant's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Caltrans DBE program. Particular attention is directed to the following:

A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).

B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.

C. A DBE joint-venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint-venture commensurate with its ownership interest.

D. A DBE must perform a commercially useful function, pursuant to 49 CFR 26.55 that is, must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work, as more fully described in section 8 below.

E. The Consultant shall list only one subcontractor for each portion of work as defined in the Consultant's bid/proposal and all DBE subcontractors should be listed in the Consultant's bid/cost proposal list of subcontractors.

F. A Consultant who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

## **9. COMMERCIALY USEFUL FUNCTION**

A. A DBE performs a commercially useful function 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 commercially useful function, 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. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

B. A DBE does not perform a commercially useful function 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.

C. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement 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 commercially useful function.

## **10. DBE CERTIFICATION AND DE-CERTIFICATION STATUS**

If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify the Contractor in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the Contractor in writing with the date of certification. Any changes should be reported to the Commission's Contract Administrator within 30 days.

## **11. DBE RECORDS**

A. The Contractor shall maintain records of materials purchased and/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 prime Contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the most current version of the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE)," CEM- 2402F (Exhibit 17-F in Chapter 17 of the LAPM), certified correct by the Contractor or the Contractor's authorized representative and shall be furnished to the Commission's Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Contractor when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE)" is submitted to the Commission's Contract Administrator.

a. Prior to the fifteenth of each month, the Contractor shall submit documentation to the Commission's Contract Administrator showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Commission's Contract Administrator showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

b. The Contractor shall also submit to the Commission's Contract Administrator documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans "Monthly DBE Trucking Verification," CEM-2404(F) form provided to the Contractor by the Commission's Contract Administrator.

## **12. REPORTING MATERIAL OR SUPPLIES PURCHASED FROM DBEs**

When Reporting DBE Participation, Material or Supplies purchased from DBEs may count as follows:

A. If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count 60 % of the cost of the materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, are bought, kept in stock, and regularly



sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

### **13. REPORTING PARTICIPATION OF DBE TRUCKING COMPANIES**

When Reporting DBE Participation, Participation of DBE trucking companies may count as follows:

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.

B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement.

C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.

D. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.

E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

F. For the purposes of this section, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives

the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

#### **14. 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.

#### **15. 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).

#### **16. 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.

EXHIBIT E

EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: Riverside County Transportation Authority 2. Contract DBE Goal: 13%
3. Project Description: On-Call Right of Way Engineering and Surveying Services (RFQ No. 24-31-076-00)
4. Project Location: Riverside County, CA
5. Consultant's Name: GUIDA 6. Prime Certified DBE: [ ]

Table with 4 columns: 7. Description of Work, Service, or Materials Supplied; 8. DBE Certification Number; 9. DBE Contact Information; 10. DBE %. Includes a section for 'Local Agency to Complete this Section' with fields for contract numbers, dates, signatures, and titles. Total claimed DBE participation is 13%.

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

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

**FTA FUNDING REQUIREMENTS (Non-construction/maintenance work)**

As used herein, "RCTC" shall have the same meaning as the "Commission." The term "contract" or "Contract" shall have the same meaning as the "Agreement."

**1. No Obligation by the Federal Government**

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

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

**2. Program Fraud and False or Fraudulent Statements or Related Acts**

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

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

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

**3. Access to Records**

The Consultant agrees to the following access to records requirements:

## EXHIBIT F

- a. To provide RCTC, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Consultant access to Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- b. To make available in the case of a contract for a capital project or improvement, as defined above and awarded by other than competitive bidding in accordance with 49 U.S.C. 5325(a), records related to the contract to RCTC, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- c. To maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Consultant agrees to maintain same until RCTC, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- d. To permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

### **4. Federal Changes**

The Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between RCTC and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract.

### **5. Civil Rights**

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332 and 49 CFR part 21, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

## EXHIBIT F

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623, Federal transit law at 49 U.S.C. § 5332, the Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against individuals on the basis of disability, and that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

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

## 6. FTA Disadvantaged Business Enterprise (DBE) Requirements

A. **General DBE Requirements:** In accordance with Federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), Commission has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs" (the "Regulations"). This RFP is subject to these stipulated regulations. In order to ensure that Commission achieves its overall DBE Program goals and objectives, Commission encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds.

It is the policy of the Commission to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

B. **Discrimination:** Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Any terms used herein that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations.

C. **Commission's Race-Neutral DBE Program:** A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, Commission does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. There is no FTA DBE goal on this Project.

Consultant shall not be required to achieve a specific level of DBE participation as a condition of contract compliance in the performance of this DOT-assisted contract. However, Consultant shall adhere to race-neutral DBE participation commitment(s) made at the time of award.

D. **Race-Neutral DBE Submissions and Ongoing Reporting Requirements (Post-Award):** At termination of the Contract, the successful Consultant shall complete and submit to

## EXHIBIT F

Commission a “DBE Race-Neutral Participation Listing” in the form provided by Commission. In the event DBE(s) are utilized in the performance of the Agreement, Consultant shall comply with applicable reporting requirements.

E. Performance of DBE Subconsultants: DBE subconsultants listed by Consultant in its “DBE Race-Neutral Participation Listing” submitted at the time of proposal shall perform the work and supply the materials for which they are listed, unless Consultant has received prior written authorization from Commission to perform the work with other forces or to obtain the materials from other sources. Consultant shall provide written notification to Commission in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

F. DBE Certification Status: If a listed DBE subconsultant is decertified during the life of this Agreement, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a non-DBE subconsultant becomes a certified DBE during the life of this Agreement, the DBE subconsultant shall notify Consultant in writing with the date of certification. Consultant shall furnish the written documentation to Commission in a timely manner. Consultant shall include this requirement in all subcontracts.

G. Consultant’s Assurance Clause Regarding Non-Discrimination: In compliance with State and Federal anti-discrimination laws, Consultant shall affirm that it will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, Consultant shall affirm that they will consider, and utilize subconsultants and vendors, in a manner consistent with non-discrimination objectives.

H. Violations: Failure by the selected Consultant(s) to carry out these requirements shall be a material breach of the contract to be awarded pursuant to this RFP, which may result in the termination of the contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the Consultant from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

I. Prompt Payment: Consultant shall pay its subconsultants for satisfactory performance of their contracts no later than 30 days from receipt of each payment Commission makes to the Consultant. 49 C.F.R. § 26.29(a), unless a shorter period is provided in the contract.

J. Compliance with DBE Requirements Contained in FTA Provisions: Consultant shall comply with all DBE reporting and other requirements contained in this Agreement.



## **7. Incorporation of Federal Transit Administration (FTA) Terms**

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

## **8. Debarment and Suspension.**

The Consultant agrees to the following:

(1) It will comply with the following requirements of 2 CFR Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200.

(2) It will not enter into any "covered transaction" (as that phrase is defined at 2 CFR §§ 180.220 and 1200.220) with any subconsultant whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by— (i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200; (ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180; and (iii) Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended recipients or third party participants.

(3) It will review the U.S. GSA "System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs," if required by U.S. DOT regulations, 2 CFR Part 1200.

## **9. ADA Access Requirements**

The Consultant shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794; 49 USC Section 5301(d).

## **10. Fly America**

To the extent applicable to the Services, the Consultant agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of Federal funds and their consultants are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of

compliance with the Fly America requirements. The Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

### **11. Cargo Preference - Use of United States-Flag Vessels**

To the extent applicable to the Services, the Consultant agrees:

1. To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
2. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Consultant in the case of a subconsultant's bill-of-lading.)
3. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**11. Buy America – Not applicable.**

**12. Employment Provisions**

To the extent applicable to the Services, Consultant shall comply with the following:

- A. Equal Employment Opportunity — Not applicable.
- B. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c) — Not applicable.
- C. Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333) —Not applicable.

#### **D. Release of Retainage**

No retainage will be withheld by the RCTC from progress payments due Consultant. Retainage by Consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating Consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions 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 or deficient subconsultant performance, or noncompliance by a subconsultant.

### **13. Termination for Convenience**

RCTC may terminate the Agreement for convenience in accordance with the terms of the Agreement.

After such termination, the Consultant shall submit a final termination settlement proposal to RCTC as directed. If the Consultant fails to submit a proposal within the time allowed, RCTC may determine, on the basis of information available, the amount, if any due the Consultant because of the termination and shall pay the amount determined. After the Consultant's proposal is received, RCTC and Consultant shall negotiate a fair and equitable settlement and the contract will be modified to reflect the negotiated agreement. If agreement cannot be reached, RCTC may issue a final determination and pay the amount determined. If the Consultant does not agree with this final determination or the determination resulting from the lack of timely submission of a proposal, the Consultant may appeal under the Disputes clause.

### **14. Administrative and Contractual Remedies on Breach; Termination for Cause**

- a. The Consultant may be declared in breach of this Agreement ("Breach") if the Consultant fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or if the Consultant fails to perform any of the other provisions of the contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms. In case of any of the foregoing, RCTC shall notify the Consultant of the Breach, and the Consultant shall have a period of ten (10) days (or such longer period as RCTC may authorize in writing) after receipt of notice from RCTC to cure the Breach.
- b. RCTC may, by written notice of termination to the Consultant specifying the effective date thereof, terminate the whole or any part of this contract, in the case of a Breach that is not cured within the timeframe set forth in (a) above ("Uncured Breach").
- c. If the contract is terminated in whole or in part for an Uncured Breach, RCTC may procure upon such terms and in such manner as RCTC may deem appropriate, supplies or services similar to those so terminated, or may complete the services with its own forces. The Consultant shall be liable to RCTC for any excess costs for such similar supplies or services, and for any other costs incurred by RCTC as a result of the Uncured Breach. The Consultant shall continue the performance of this contract to the extent not terminated under the provisions of this clause.
- d. Except with respect to defaults of Subconsultants, the Consultant shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Consultant. If the failure to perform is caused by the default of a Subconsultant, and if such default arises out of causes beyond the control of both the Consultant and the Subconsultant, and without the fault or negligence of either of them, the Consultant shall not be liable for any excess costs for failure to perform, unless the supplies or

## EXHIBIT F

services to be furnished by the Subconsultant were obtainable from other sources in sufficient time to permit the Consultant to meet the required project completion schedule.

e. Payment for completed services or supplies delivered to and accepted by RCTC shall be at the contract price. RCTC may withhold from amounts otherwise due the Consultant for such completed services or supplies such sum as RCTC determines to be necessary to protect RCTC against loss because of outstanding liens of claims of former lien holders, or to reimburse RCTC for any other costs related to the Uncured Breach.

f. If, after notice of termination of this contract for cause, it is determined for any reason that an Uncured Breach did not exist, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the provisions for termination for convenience of RCTC.

g. The rights and remedies of RCTC provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this contract including, but not limited to, the right to specific performance.

h. Notwithstanding the above, RCTC may, without providing an opportunity to cure, terminate the contract in accordance with the timeframe set forth in Section 17 of the contract, if RCTC determines such action is in its best interest based on the nature of the Breach. Such actions shall not limit any of RCTC's remedies set forth above.

### **16. Disputes**

a. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by supplemental agreement shall be decided by RCTC's Deputy Executive Director, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Consultant. The decision of the RCTC Deputy Executive Director shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, Consultant mails or otherwise furnishes to the RCTC Deputy Executive Director a written appeal addressed to RCTC's Executive Director. The decision of RCTC Executive Director or duly authorized representative for the determination of such appeals shall be final and conclusive.

b. The provisions of this Paragraph shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged, provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Paragraph, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

c. Pending final decision of a dispute hereunder, Consultant shall proceed diligently with the performance of this Agreement and in accordance with the decision of RCTC's Deputy Executive Director. This "Disputes" clause does not preclude consideration of questions of law in connection

with decisions provided for above. Nothing in this Agreement, however, shall be construed as making final the decision of any RCTC official or representative on a question of law, which questions shall be settled in accordance with the laws of the State of California.

### **17. Lobbying**

See the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Consultants who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Offeror shall complete and submit with its bid/proposal the attached Certification Regarding Lobbying, and if applicable, the Standard Form-LLL, "Disclosure Form to Report Lobbying."

### **18. Energy Conservation**

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

### **19. Clean Water**

a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Consultant agrees to report each violation to RCTC and understands and agrees that RCTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

d. The Consultant further agrees that:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

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

## 20. Clean Air

a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Consultant agrees to report each violation to RCTC and understands and agrees that RCTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

b. The Consultant further agrees that:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

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

## 21. Recycled Products

Recovered Materials - The Consultant agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## 21. SPECIAL PROVISION FOR PROMOTING COVID-19 SAFETY

### Section 49. Centers for Disease Control and Prevention Order on Requirements for Persons to Wear Masks While on Conveyances and at Transportation Hubs.

*(a) Compliance with CDC Mask Order.* The Centers for Disease Control and Prevention (“CDC”) Order of January 29, 2021, titled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (“CDC Mask Order”), applies to this Agreement. One of the objectives of the CDC Mask Order is “[m]aintaining a safe and operating transportation system.” Consultant agrees that it will comply, and will require all subconsultants to comply, with the CDC Mask Order, to the extent the CDC Mask Order remains in effect.

*(b) Enforcement for non-compliance.* Consultant agrees that FTA and RCTC may take enforcement action for non-compliance with the CDC Mask Order, to the extent the CDC Mask Order remains in effect, including: (1) enforcement actions authorized by 49 U.S.C. § 5329(g); (2) referring Consultant to the CDC or other Federal authority for enforcement action; (3) enforcement actions authorized by 2 CFR §§ 200.339 – .340; and (4) any other enforcement action authorized by Federal law or regulation.

## 22. Safe Operation of Motor Vehicles

Pursuant to Federal Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party consultant to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

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

## 23. Notification to FTA.

- a. If a current or prospective legal matter that may affect the Federal Government emerges, the Consultant must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which this Agreement is being performed. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- b. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- c. *Additional Notice to U.S. DOT Inspector General.* The Consultant must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Commission located, if Consultant has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Consultant. In this paragraph, “promptly” means to refer information without delay and without change.

**24. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

Consultant shall not 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 funded under this Contract. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

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EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

**1. Type of Federal Action:**  a. contract **N/A**  
 b. grant  
 c. cooperative agreement  
 d. loan  
 e. loan guarantee  
 f. loan insurance

**2. Status of Federal Action:**  a. bid/offer/application **N/A**  
 b. initial award  
 c. post-award

**3. Report Type:**  a. initial **N/A**  
 b. material change  
**For Material Change Only:**  
year \_\_\_\_\_ quarter \_\_\_\_\_  
date of last report \_\_\_\_\_

**4. Name and Address of Reporting Entity N/A**  
 Prime  Subawardee  
Tier \_\_\_\_\_, if known  
Congressional District, if known \_\_\_\_\_

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: N/A**  
Congressional District, if known \_\_\_\_\_

**6. Federal Department/Agency: N/A**

**7. Federal Program Name/Description: N/A**  
CFDA Number, if applicable \_\_\_\_\_

**8. Federal Action Number, if known: N/A**

**9. Award Amount, if known: N/A**

**10. Name and Address of Lobby Entity N/A**  
(If individual, last name, first name, MI)  
(attach Continuation Sheet(s) if necessary)

**11. Individuals Performing Services N/A**  
(including address if different from No. 10)  
(last name, first name, MI)

**12. Amount of Payment (check all that apply) N/A**  
\$ \_\_\_\_\_  actual  planned


**13. Form of Payment (check all that apply):**  
 a. cash  
 b. in-kind; specify: nature \_\_\_\_\_  
Value \_\_\_\_\_

**14. Type of Payment (check all that apply) N/A**  
 a. retainer  
 b. one-time fee  
 c. commission  
 d. contingent fee  
 e. deferred  
 f. other, specify \_\_\_\_\_

**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 12: N/A**  
(attach Continuation Sheet(s) if necessary)

**16. Continuation Sheet(s) attached: Yes  No**

**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.**

Signature:   
Print Name: **Bernie McNally, PLS**  
Title: **Executive Vice President**  
Telephone No.: **949-777-2000** Date: **06/20/2024**

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Standard Form - LLL

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

## INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered federal action. 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.
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EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

**1. Type of Federal Action:**  
 a. contract  
 b. grant  
 c. cooperative agreement  
 d. loan  
 e. loan guarantee  
 f. loan insurance

**2. Status of Federal Action:**  
 a. bid/offer/application  
 b. initial award  
 c. post-award

**3. Report Type:**  
 a. initial  
 b. material change  
**For Material Change Only:**  
 year \_\_\_\_\_ quarter \_\_\_\_\_  
 date of last report \_\_\_\_\_

**4. Name and Address of Reporting Entity**  
 Prime  Subawardee  
 Tier \_\_\_\_\_, if known  
 Congressional District, if known \_\_\_\_\_

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**  
 Congressional District, if known \_\_\_\_\_

**6. Federal Department/Agency:** \_\_\_\_\_

**7. Federal Program Name/Description:**  
 CFDA Number, if applicable \_\_\_\_\_

**8. Federal Action Number, if known:** \_\_\_\_\_

**9. Award Amount, if known:** \_\_\_\_\_

**10. Name and Address of Lobby Entity**  
 (If individual, last name, first name, MI)  
 \_\_\_\_\_  
 (attach Continuation Sheet(s) if necessary)

**11. Individuals Performing Services**  
 (including address if different from No. 10)  
 (last name, first name, MI)  
 \_\_\_\_\_  
 (attach Continuation Sheet(s) if necessary)

**12. Amount of Payment (check all that apply)**  
 \$ \_\_\_\_\_  actual  planned

**13. Form of Payment (check all that apply):**  
 a. cash  
 b. in-kind; specify: nature \_\_\_\_\_  
 Value \_\_\_\_\_

**14. Type of Payment (check all that apply)**  
 a. retainer  
 b. one-time fee  
 c. commission  
 d. contingent fee  
 e. deferred  
 f. other, specify \_\_\_\_\_

**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 12:**  
 \_\_\_\_\_  
 (attach Continuation Sheet(s) if necessary)

**16. Continuation Sheet(s) attached:** Yes  No

**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.**

Signature: Daniel A. Calvillo  
 Print Name: Daniel Calvillo  
 Title: Vice President/ CFO  
 Telephone No.: (909) 484-4200 Date: 6/12/24

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**EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES**

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<br/> <input type="checkbox"/> b. grant<br/> <input type="checkbox"/> c. cooperative agreement<br/> <input type="checkbox"/> d. loan<br/> <input type="checkbox"/> e. loan guarantee<br/> <input type="checkbox"/> f. loan insurance</p>  | <p><b>2. Status of Federal Action:</b></p> <p><input type="checkbox"/> a. bid/offer/application<br/> <input type="checkbox"/> b. initial award<br/> <input type="checkbox"/> c. post-award</p>   | <p><b>3. Report Type:</b></p> <p><input type="checkbox"/> a. initial<br/> <input type="checkbox"/> b. material change</p> <p><b>For Material Change Only:</b><br/>                 year _____ quarter _____<br/>                 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<br/>                 Tier _____, if known</p> <p>Congressional District, if known _____</p>  | <p><b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b></p> <p>Congressional District, if known _____</p>  |  |
| <p><b>6. Federal Department/Agency:</b></p>   | <p><b>7. Federal Program Name/Description:</b></p> <p>CFDA Number, if applicable _____</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><br/>                 (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><br/>                 (including address if different from No. 10)<br/>                 (last name, first name, MI)</p> <p style="text-align: center;">(attach Continuation Sheet(s) if necessary)</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<br/> <input type="checkbox"/> b. one-time fee<br/> <input type="checkbox"/> c. commission<br/> <input type="checkbox"/> d. contingent fee<br/> <input type="checkbox"/> e. deferred<br/> <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<br/> <input type="checkbox"/> b. in-kind; specify: nature _____<br/>                 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 12:</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 checked="" 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: <u><i>Liliana Aliyazicioglu</i></u></p> <p>Print Name: <u>Liliana Aliyazicioglu</u></p> <p>Title: <u>President &amp; CEO</u></p> <p>Telephone No.: <u>714-968-5459</u>      Date: <u>05/29/2024</u></p>   |  |  |
| <p style="text-align: right;">Authorized for Local Reproduction<br/>Standard Form - LLL</p>   |  |  |
| <p><b>Federal Use Only:</b></p>   |  |  |

Standard Form LLL Rev. 04-28-06

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EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action: 2. Status of Federal Action: 3. Report Type: 4. Name and Address of Reporting Entity: 5. If Reporting Entity in No. 4 is Subawardee... 6. Federal Department/Agency: 7. Federal Program Name/Description: 8. Federal Action Number, if known: 9. Award Amount, if known: 10. Name and Address of Lobby Entity: 11. Individuals Performing Services: 12. Amount of Payment: 13. Form of Payment: 14. Type of Payment: 15. Brief Description of Services Performed... 16. Continuation Sheet(s) attached: 17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352...

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## Agreement No. 24-31-122-00

**PROFESSIONAL SERVICES AGREEMENT  
WITH PROPOSITION 1B, FTA AND FHWA FUNDING ASSISTANCE**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
MARK THOMAS AND COMPANY, INC.  
FOR ON-CALL RIGHT OF WAY  
ENGINEERING AND SURVEYING SERVICES**

**Parties and Date.**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2024, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and Mark Thomas and Company, 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. A source of funding for payment for on-call professional consulting services provided under this Agreement may be State Proposition 1B funds, Federal Highway Administration Funds ("FHWA") administered by the California Department of Transportation ("Caltrans"), and/or funds from the Federal Transit Administration ("FTA").

E. Commission is the County Transportation Commission for Riverside County, with responsibility for, among other things, implementing or allocating funding for various transportation programs and projects throughout the County of Riverside ("County").

F. 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.

G. 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.

H. Consultant desires to perform and assume responsibility for the provision of certain on-call right of way engineering and surveying services in the County of Riverside, California, required by Commission, for Commission's or RCA's benefit, on the terms and conditions set forth in this Agreement. Services shall be provided 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.

I. The 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 engineering and surveying 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 fully executed 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 the Schedule of Services set forth in a Task Order. 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.

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 Federal and State process reviews. In addition, the applicable federal agency, or Caltrans, may require that prior to performance of any work for which Federal or State reimbursement is requested and provided, that said federal agency or Caltrans must give to Commission an "Authorization to Proceed".

4. Audit Procedures. Consultant and 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 23 and 24 of this Agreement.

5. Term.

5.1 This Agreement shall go into effect on the date first set forth above, contingent upon approval by Commission. This Agreement shall end three years from the date set forth above. All Task Order work should be completed within the term.

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 Moritz 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: Dave Moritz, Matt Stringer, Bob Vasquez, Tobert McMilan, Steven Martin, Teri Kahlen, Sherrie Zimmerman, and Josh Cosper or as otherwise identified in the Task Order.

9. Standard of Care; Licenses. Consultant represents and maintains that it is skilled in the professional calling necessary to perform all Services, duties and obligations required by this Agreement to fully and adequately complete the Project. Consultant shall perform the Services and duties in conformance to and consistent with the standards

generally recognized as being employed by professionals in the same discipline in the State of California. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents and warrants to the Commission that its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the Commission or RCA, 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 or RCA. 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.

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, 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 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.

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. 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, 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.

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. 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, or any cost proposal included as part of a Task Order ("Cost Proposal") unless additional reimbursement is provided for by written amendment. The overhead rates included in the attached Exhibit "C" shall be fixed for the term of the Master Agreement, and shall not be subject to adjustment, unless required by the applicable funding source. 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, this Agreement or any Task Order is required, the Agreement time or actual costs reimbursable by Commission shall be adjusted by written 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.



19.2 In addition to the allowable incurred costs, Commission shall pay Consultant a fixed fee to be set forth in each Task Order ("Fixed Fee"). The Fixed Fee is nonadjustable for each Task Order, except in the event of a significant change in the Scope of Services, and such adjustment is made by written amendment.

19.3 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.

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

19.5 Progress payments shall be made monthly in arrears based on Services provided and allowable incurred costs. A pro rata portion of the Fixed Fee shall be included in the monthly progress payments. 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.

19.6 No payment shall be made prior to approval of any Services, nor for any Services performed prior to approval of this Agreement.

19.7 Consultant shall be reimbursed, as promptly as fiscal procedures will permit upon receipt by Commission's Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 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

19.8 The total amount payable by Commission, including the Fixed Fee, shall not exceed the amount set forth in each Task Order.

19.9 Commission has or will enter into four (4) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement. The other On-Call Right of Way Engineering and Surveying Services Task Order Contracts are David Evans and Associates (24-31-076-00), GUIDA (24-31-121-00) and Psomas, (24-31-123-00). The total amount payable by Commission for the four Task Order Contracts shall not exceed a cumulative maximum total value of Three Million Two Hundred Thousand Dollars (\$3,200,000) ("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 Engineering and Surveying Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the On-Call Right of Way Engineering and Surveying Services Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the On-Call Right of Way Engineering and Surveying Services 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.

19.10 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.

19.11 Consultant shall not be reimbursed for any expenses unless authorized in writing by the Commission's Contract Administrator.

19.12 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.

21.1 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.

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 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.

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 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 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.

21.6 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.

21.7 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.

21.8 Consultant may not terminate this Agreement except for cause.

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, 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, FHWA, 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 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 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.

25.3 Consultant shall pay its subconsultants within ten (10) 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 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" or in a Task Order. 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 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 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.

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 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.

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

## 27. Labor Code Requirements.

### 27.1 Prevailing Wages.

(a) 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) Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Section.

(c) 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>.

(d) 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. Since 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.

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

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 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.

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 sole risk.

28.2 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 or RCA, 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 and RCA further are 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 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 or RCA.

28.4 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.

29. Indemnification. To the fullest extent permitted by law, Consultant shall defend (with counsel of Commission's choosing), 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, 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, 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, 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.

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*: \$1,000,000 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 \$2,000,000 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, RCA, 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, 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, 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 and RCA (if agreed to in a written contract or agreement) before the Commission's or RCA'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, 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.

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, 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.

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 and RCA 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.

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.

(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 neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. 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 contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project



resulting from this contract.

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 Agreement 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 "G", 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 3.23.5 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 or RCA. 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 or RCA 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 and RCA reserve 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 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.

37.2. 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.

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.

40. 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:**

Mark Thomas and Company, Inc.  
2121 Alton Parkway  
Suite 210  
Irvine, CA 92606  
Attn: Darin Johnson

**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.

41. 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.

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

43. 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.

44. 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.

45. Provisions Applicable When State Funds or Federal Funds Are Involved. When funding for the Services under a Task Order is 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. 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.

46. 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.

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

48. 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.

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

50. Attorney Client Privilege. The Parties recognize that, during the Project, the Commission and its attorneys will engage in communication that gives rise to an attorney client privilege of confidentiality ("Confidential Communication"). Given the nature of the work done by Consultant for the Commission, it may be necessary for the Consultant to participate in Confidential Communications. To the extent that (i) the Consultant is a party to any Confidential Communication, and (ii) a third party seeks discovery of such communications, then the Consultant shall be deemed to be an agent of the Commission solely for purposes of preserving any attorney client privilege in the relevant Confidential Communication. Any such attorney client privilege shall be held by the Commission and the Consultant is not authorized to waive that privilege or, otherwise, disclose such Confidential Communication except as set forth below. This Section is intended to maintain the privilege in any privileged Confidential Communications that are (1) between and among Commission, Consultant, and Commission's attorneys; (2) between Consultant (on behalf of the Commission) and Commission's attorneys; (3) Confidential Communications that occur in Closed Session meetings wherein the Commission, the Commission's attorneys and Consultant are present; and (4) between Commission and Consultant wherein the substance of the Confidential Communication is conveyed to/from the Consultant.

Consultant may disclose a Confidential Communication to the extent such disclosure is required by legal process, by a court of competent jurisdiction or by any other governmental authority, provided that any such disclosure shall be limited to the specific part of the Confidential Communication required to be disclosed and provided that Consultant first comply with the requirements set forth in this paragraph. As soon as practicable after Consultant becomes aware that it is required, or may become required, to disclose the Confidential Communication for such reason, Consultant shall notify the Commission in writing, in order to allow the Commission to pursue legal remedies designed to limit the Confidential Communication required to be disclosed or to assure the confidential treatment of the disclosed information following its disclosure. Consultant shall cooperate with the Commission, on a reimbursable basis, to assist the Commission in limiting the scope of disclosure or assuring the confidential treatment of any disclosed information.

51. 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.

52. 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.

53. 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.

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

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

**[Signatures on following page]**

**SIGNATURE PAGE  
TO  
PROFESSIONAL SERVICES AGREEMENT  
WITH PROPOSITION 1B, FTA AND FHWA FUNDING ASSISTANCE FOR  
RIGHT OF WAY ENGINEERING AND SURVEYING SERVICES**

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

|   |   |
|---|---|
| <p><b>RIVERSIDE COUNTY<br/>TRANSPORTATION COMMISSION</b></p> <p>By: _____<br/>Aaron Hake</p> <p><i>Approved as to Form:</i></p> <p>By: _____<br/>Best, Best &amp; Krieger LLP<br/>General Counsel</p> | <p><b>CONSULTANT<br/>MARK THOMAS AND COMPANY, INC.</b></p> <p>By: _____<br/>Signature</p> <p>_____ Name</p> <p>_____ Title</p> <p><b>ATTEST:</b></p> <p>By: _____</p> <p>Its: _____</p> |
|---|---|

\* 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.

**TO BE INSERTED FROM RFQ:**

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

**EXHIBIT "E" - CONSULTANT DBE COMMITMENT**

**EXHIBIT "F" - FTA PROVISIONS**

**EXHIBIT "G" – LOBBYING ACTIVITIES DISCLOSURE**

**TO BE INSERTED FROM CONSULTANT PROPOSAL:**

**EXHIBIT "C"- COMPENSATION AND PAYMENT**

**DRAFT**

## SCOPE OF SERVICES

### Right of Way Engineering and Surveying Services

## SCOPE OF SERVICES

The Riverside County Transportation Commission (Commission) and the Western Riverside County Regional Conservation Authority (RCA) have procured one or more Consultants (Consultant or Right of Way Engineering and Surveying Services Consultant) to provide Right of Way Engineering and Surveying Services on an On-Call/as needed basis in support of current Commission and RCA Projects, Measure A Projects, and projects done in partnership with other agencies, pursuant to Task Orders issued in the sole discretion of the Commission and/or the RCA.

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

Such Right of Way Engineering and Surveying Services may include, but are not limited to, the following work programs, and/or comply with applicable requirements below:

1. Consultant shall provide right of way engineering and survey services including but not limited to: preparing Boundary Maps, Monumentation Maps, Survey Control Maps, Records of Survey, Lot Line Adjustments, Subdivision Maps, Legal Descriptions and Plats, Parcel Maps, Appraisal Maps, Certificates of Compliance, staking/marketing of parcels and rights of way for appraisal and utility potholing purposes, and other right of way engineering as necessary.
2. Consultant shall prepare Boundary, Monumentation, and Survey Control Maps showing all parcels and easement boundaries and their relationship to the land net monuments used to define them. In cases where the Commission is working in conjunction with the California Department of Transportation (Caltrans), these maps shall conform to the Caltrans District 8 Right of Way Engineering Quality Assurance Plan for the Preparation of Documents and Maps.
3. Consultant shall utilize appropriate land surveying and land title practices to:
  - Establish all property and easement boundaries within and overlapping the project area
  - Perform site reconnaissance and monument recovery
  - Establish or reestablish all monumentation required by state law and local regulations



- File a Record of Survey, if necessary, to comply with the Land Surveyors Act. The preparation, filing, and associated fees will be the responsibility of Consultant.

All data, maps, and documents produced by Consultant shall be subject to approval and acceptance by the Commission's or the RCA's Project Manager, and in certain cases, Caltrans. In the event of non-acceptance due to errors or omissions, Consultant shall have seven calendar days to make corrections and return maps and documents to the Commission and/or the RCA. Final acceptance will occur only after the work product has been determined to conform to the scope of work and requirements.

4. All surveying and mapping work affecting the State of California Right of Way at any location, or along any route, shall be in accordance with state law and local regulation, and the procedures and instructions contained in the Caltrans Right of Way Manual, the Caltrans Surveys Manual (Manuals), and the Caltrans District 8 Right of Way Engineering Quality Assurance Plan for the Preparation of Documents and Maps. All right of way acquired by the Commission on for state highway system projects will be subject to acceptance and transfer to the State.
5. Consultant shall appoint a Survey Manager who is a licensed Land Surveyor or Licensed Civil Engineer, authorized to practice land surveying by the State of California. The Survey Manager will be responsible for all work performed by Consultant for the Commission or the RCA.
6. Deliverables shall typically consist of one (1) electronic copy.
7. If any legal issues exist during the course of an assignment, Consultant shall request legal opinion. The Commission's or RCA's legal counsel shall render all legal opinions.
8. Consultant shall utilize the services of Commission's and/or RCA's on-call consultants supplemental work required for the effective delivery of Consultant's services to the Commission or the RCA. Fees charged by Commission's or RCA's on-call consultants shall be paid directly by the Commission or the RCA.

Any and all work submitted by the Consultant shall be reviewed by the Consultant LS/LCE and be complete and final in strict accordance with the California Board of Professional Engineers and Land Surveyors Rule 476, Subsection (e), and signed and sealed in accordance with Section 8761 of the Professional Land Surveyors Act.

As it pertains to projects affecting the State Highway System, work shall not be considered complete until Caltrans has approved the work for inclusion into the Right of Way Engineering files. Caltrans does not assume responsibility for the Consultant work after inclusion into the R/W Engineering files, Consultant shall retain responsibility for all work performed and submitted.

Lot Line Adjustments, Parcel Maps, Surveys and Legal Descriptions work required under this Scope of Work may include field surveying, legal description, map preparation and the marking of properties for utility potholing, appraisal, and boundary determination purposes or other right of way engineering required for transportation purposes. Surveys prepared in connection with Caltrans projects shall be performed in accordance with the current Manuals. Work not covered by the Manuals or not associated with Caltrans projects shall be performed in accordance with accepted professional surveying standards.

Survey points, lines, and monuments shall be established, marked, identified, and referenced. If required, Records of Survey shall be prepared and filed in accordance with Chapter 15 (Land Surveyors Act) of the Business and Professions Code. A copy of original survey documents resulting from contract work, which may include field notes, adjustment calculations, final results, and intermediate documents, may be required to be delivered and will become the property of Commission or RCA.

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**EXHIBIT "B"**

**SAMPLE TASK ORDER FORM**

Task Order No. \_\_\_\_\_

Contract: [INSERT NAME OF CONTRACT]

Consultant: [INSERT NAME OF CONSULTANT]

**The Consultant is hereby authorized to perform the following work subject to the provisions of the Contract identified above:**

**List funding sources:** \_\_\_\_\_

**List any attachments:** (Please provide if any.)

**Dollar Amount of Task Order:** Not to exceed \$ \_\_\_\_\_ .00

**Completion Date:** \_\_\_\_\_, 202\_\_

The undersigned consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Contract identified above and will accept as full payment therefore the amount shown above.

**Riverside County Transportation Commission**

**Consultant**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

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

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

**EXHIBIT "C"**  
**COMPENSATION SUMMARY<sup>1</sup>**

| FIRM                            | PROJECT TASKS/ROLE                              | COST                   |
|---------------------------------|---|------------------------|
| <i><b>Prime Consultant:</b></i> |   |                        |
| Mark Thomas and Company         | Right of Way Engineering and Surveying Services | \$ 3,200,000.00        |
| <i><b>Sub Consultants:</b></i>  |   |                        |
| CL Surveying and Mapping, Inc,  | Project Surveyor                                | TBD                    |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
| <b>TOTAL COSTS</b>              |   | <b>\$ 3,200,000.00</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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## EXHIBIT "D"

### FHWA/ 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 unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. 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.

C. If this Agreement is federally funded, the Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

D. If this Agreement is federally funded, the Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations,

including employment practices when the Agreement covers a program whose goal is employment.

## **2. DEBARMENT AND SUSPENSION CERTIFICATION**

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.

## **3. 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.

## **4. PROMPT PAYMENT**

Consultant agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the

prime contractor 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.

## **5. RELEASE OF RETAINAGE**

No retainage will be withheld by the Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

## **6. 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.

## **7. DBE PARTICIPATION**

Caltrans has developed a statewide DBE program pursuant to 49 C.F.R. Part 26. The requirements and procedures, as applicable, of the Caltrans DBE program are hereby incorporated by reference into this Agreement. Even if no DBE participation will be reported, Consultant shall complete Exhibits "E" of this Agreement in compliance with the Caltrans DBE program, a final utilization report in the form provided by the Commission, and any other Caltrans required DBE forms.

A. This Agreement is subject to Title 49, Part 26 of the Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." By obtaining DBE participation on this Agreement, Consultant will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. This Agreement has a 13% DBE goal, and DBE goals may be included with each task order request for proposals. If a DBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met. A DBE is a firm meeting the definition of a DBE as specified in 49 CFR.

C. DBE and other small businesses (SB), as defined in Title 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Consultant, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the contractor 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, Caltrans or the Department of Transportation deems appropriate.

D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

E. A DBE may be terminated only with prior written approval from the Commission and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting Commission consent for the termination, the prime consultant must meet the procedural requirements specified in 49 CFR 26.53(f).

## **8. DBE PARTICIPATION GENERAL INFORMATION**

It is Consultant's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Caltrans DBE program. Particular attention is directed to the following:

A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).

B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.

C. A DBE joint-venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint-venture commensurate with its ownership interest.

D. A DBE must perform a commercially useful function, pursuant to 49 CFR 26.55 that is, must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work, as more fully described in section 8 below.



E. The Consultant shall list only one subcontractor for each portion of work as defined in the Consultant's bid/proposal and all DBE subcontractors should be listed in the Consultant's bid/cost proposal list of subcontractors.

F. A Consultant who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

## **9. COMMERCIALLY USEFUL FUNCTION**

A. A DBE performs a commercially useful function 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 commercially useful function, 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. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

B. A DBE does not perform a commercially useful function 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.

C. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement 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 commercially useful function.

## **10. DBE CERTIFICATION AND DE-CERTIFICATION STATUS**

If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify the Contractor in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the Contractor in writing with the date of certification. Any changes should be reported to the Commission's Contract Administrator within 30 days.

## **11. DBE RECORDS**

A. The Contractor shall maintain records of materials purchased and/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 prime Contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the most current version of the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE)," CEM- 2402F (Exhibit 17-F in Chapter 17 of the LAPM), certified correct by the Contractor or the Contractor's authorized representative and shall be furnished to the Commission's Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Contractor when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE)" is submitted to the Commission's Contract Administrator.

a. Prior to the fifteenth of each month, the Contractor shall submit documentation to the Commission's Contract Administrator showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Commission's Contract Administrator showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

b. The Contractor shall also submit to the Commission's Contract Administrator documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans "Monthly DBE Trucking Verification," CEM-2404(F) form provided to the Contractor by the Commission's Contract Administrator.

## **12. REPORTING MATERIAL OR SUPPLIES PURCHASED FROM DBEs**

When Reporting DBE Participation, Material or Supplies purchased from DBEs may count as follows:

A. If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count 60 % of the cost of the materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, are bought, kept in stock, and regularly

sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

### **13. REPORTING PARTICIPATION OF DBE TRUCKING COMPANIES**

When Reporting DBE Participation, Participation of DBE trucking companies may count as follows:

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.

B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement.

C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.

D. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.

E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

F. For the purposes of this section, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives

the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

#### **14. 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.

#### **15. 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).

#### **16. 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.

# CONSULTANT PROPOSAL DBE COMMITMENT - EXHIBIT E

## EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

Riverside County Transportation  
 1. Local Agency: Commission (RCTC) 2. Contract DBE Goal: 13%  
 3. Project Description: On-Call Right of Way Engineering and Surveying Services  
 4. Project Location: Riverside County, California  
 5. Consultant's Name: Mark Thomas and Company, Inc. 6. Prime Certified DBE:

| 7. Description of Work, Service, or Materials Supplied  | 8. DBE Certification Number | 9. DBE Contact Information   | 10. DBE %                          |
|---|-----------------------------|--|------------------------------------|
| CL Surveying & Mapping, Inc   Field Surveying and Mapping Support   | 38284                       | Lam Le / 1269 West Pomona Road, Suite 108, Corona, CA 92882 / dan@cl-survey.com / (909) 484-4200                                     | 13%                                |
|   |                             |  |                                    |
|   |                             |  |                                    |
|   |                             |  |                                    |
|   |                             |  |                                    |
|   |                             |  |                                    |
| <b>Local Agency to Complete this Section</b>  |                             |  |                                    |
| 17. Local Agency Contract Number: _____   |                             | <b>11. TOTAL CLAIMED DBE PARTICIPATION</b>   | 13%                                |
| 18. Federal-Aid Project Number: _____   |                             |  |                                    |
| 19. Proposed Contract Execution Date: _____   |                             |  |                                    |
| Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. |                             | IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. |                                    |
| 20. Local Agency Representative's Signature _____   | 21. Date _____              | <u>Darin Johnson</u><br>12. Preparer's Signature   | <u>6/20/2024</u><br>13. Date       |
| 22. Local Agency Representative's Name _____  | 23. Phone _____             | <u>Darin Johnson, PE</u><br>14. Preparer's Name  | <u>(805) 701-9427</u><br>15. Phone |
| 24. Local Agency Representative's Title _____   |                             | <u>Associate Principal</u><br>16. Preparer's Title   |                                    |

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

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

EXHIBIT J-4

## **FTA FUNDING REQUIREMENTS (Non-construction/maintenance work)**

As used herein, "RCTC" shall have the same meaning as the "Commission." The term "contract" or "Contract" shall have the same meaning as the "Agreement."

### **1. No Obligation by the Federal Government**

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

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

### **2. Program Fraud and False or Fraudulent Statements or Related Acts**

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

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

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

### **3. Access to Records**

The Consultant agrees to the following access to records requirements:

## EXHIBIT F

- a. To provide RCTC, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Consultant access to Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- b. To make available in the case of a contract for a capital project or improvement, as defined above and awarded by other than competitive bidding in accordance with 49 U.S.C. 5325(a), records related to the contract to RCTC, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- c. To maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Consultant agrees to maintain same until RCTC, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- d. To permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

### **4. Federal Changes**

The Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between RCTC and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract.

### **5. Civil Rights**

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332 and 49 CFR part 21, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

## EXHIBIT F

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623, Federal transit law at 49 U.S.C. § 5332, the Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against individuals on the basis of disability, and that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

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



## 6. FTA Disadvantaged Business Enterprise (DBE) Requirements

A. **General DBE Requirements:** In accordance with Federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), Commission has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs" (the "Regulations"). This RFP is subject to these stipulated regulations. In order to ensure that Commission achieves its overall DBE Program goals and objectives, Commission encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds.

It is the policy of the Commission to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

B. **Discrimination:** Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Any terms used herein that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations.

C. **Commission's Race-Neutral DBE Program:** A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, Commission does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. There is no FTA DBE goal on this Project.

Consultant shall not be required to achieve a specific level of DBE participation as a condition of contract compliance in the performance of this DOT-assisted contract. However, Consultant shall adhere to race-neutral DBE participation commitment(s) made at the time of award.

D. **Race-Neutral DBE Submissions and Ongoing Reporting Requirements (Post-Award):** At termination of the Contract, the successful Consultant shall complete and submit to

## EXHIBIT F

Commission a “DBE Race-Neutral Participation Listing” in the form provided by Commission. In the event DBE(s) are utilized in the performance of the Agreement, Consultant shall comply with applicable reporting requirements.

E. Performance of DBE Subconsultants: DBE subconsultants listed by Consultant in its “DBE Race-Neutral Participation Listing” submitted at the time of proposal shall perform the work and supply the materials for which they are listed, unless Consultant has received prior written authorization from Commission to perform the work with other forces or to obtain the materials from other sources. Consultant shall provide written notification to Commission in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

F. DBE Certification Status: If a listed DBE subconsultant is decertified during the life of this Agreement, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a non-DBE subconsultant becomes a certified DBE during the life of this Agreement, the DBE subconsultant shall notify Consultant in writing with the date of certification. Consultant shall furnish the written documentation to Commission in a timely manner. Consultant shall include this requirement in all subcontracts.

G. Consultant’s Assurance Clause Regarding Non-Discrimination: In compliance with State and Federal anti-discrimination laws, Consultant shall affirm that it will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, Consultant shall affirm that they will consider, and utilize subconsultants and vendors, in a manner consistent with non-discrimination objectives.

H. Violations: Failure by the selected Consultant(s) to carry out these requirements shall be a material breach of the contract to be awarded pursuant to this RFP, which may result in the termination of the contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the Consultant from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

I. Prompt Payment: Consultant shall pay its subconsultants for satisfactory performance of their contracts no later than 30 days from receipt of each payment Commission makes to the Consultant. 49 C.F.R. § 26.29(a), unless a shorter period is provided in the contract.

J. Compliance with DBE Requirements Contained in FTA Provisions: Consultant shall comply with all DBE reporting and other requirements contained in this Agreement.

## **7. Incorporation of Federal Transit Administration (FTA) Terms**

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

## **8. Debarment and Suspension.**

The Consultant agrees to the following:

(1) It will comply with the following requirements of 2 CFR Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200.

(2) It will not enter into any "covered transaction" (as that phrase is defined at 2 CFR §§ 180.220 and 1200.220) with any subconsultant whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by— (i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200; (ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180; and (iii) Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended recipients or third party participants.

(3) It will review the U.S. GSA "System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs," if required by U.S. DOT regulations, 2 CFR Part 1200.

## **9. ADA Access Requirements**

The Consultant shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794; 49 USC Section 5301(d).

## **10. Fly America**

To the extent applicable to the Services, the Consultant agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of Federal funds and their consultants are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of

compliance with the Fly America requirements. The Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

### **11. Cargo Preference - Use of United States-Flag Vessels**

To the extent applicable to the Services, the Consultant agrees:

1. To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
2. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Consultant in the case of a subconsultant's bill-of-lading.)
3. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**11. Buy America – Not applicable.**

**12. Employment Provisions**

To the extent applicable to the Services, Consultant shall comply with the following:

- A. Equal Employment Opportunity — Not applicable.
- B. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c) — Not applicable.
- C. Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333) —Not applicable.

#### **D. Release of Retainage**

No retainage will be withheld by the RCTC from progress payments due Consultant. Retainage by Consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating Consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions 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 or deficient subconsultant performance, or noncompliance by a subconsultant.

### **13. Termination for Convenience**

RCTC may terminate the Agreement for convenience in accordance with the terms of the Agreement.

After such termination, the Consultant shall submit a final termination settlement proposal to RCTC as directed. If the Consultant fails to submit a proposal within the time allowed, RCTC may determine, on the basis of information available, the amount, if any due the Consultant because of the termination and shall pay the amount determined. After the Consultant's proposal is received, RCTC and Consultant shall negotiate a fair and equitable settlement and the contract will be modified to reflect the negotiated agreement. If agreement cannot be reached, RCTC may issue a final determination and pay the amount determined. If the Consultant does not agree with this final determination or the determination resulting from the lack of timely submission of a proposal, the Consultant may appeal under the Disputes clause.

### **14. Administrative and Contractual Remedies on Breach; Termination for Cause**

a. The Consultant may be declared in breach of this Agreement ("Breach") if the Consultant fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or if the Consultant fails to perform any of the other provisions of the contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms. In case of any of the foregoing, RCTC shall notify the Consultant of the Breach, and the Consultant shall have a period of ten (10) days (or such longer period as RCTC may authorize in writing) after receipt of notice from RCTC to cure the Breach.

b. RCTC may, by written notice of termination to the Consultant specifying the effective date thereof, terminate the whole or any part of this contract, in the case of a Breach that is not cured within the timeframe set forth in (a) above ("Uncured Breach").

c. If the contract is terminated in whole or in part for an Uncured Breach, RCTC may procure upon such terms and in such manner as RCTC may deem appropriate, supplies or services similar to those so terminated, or may complete the services with its own forces. The Consultant shall be liable to RCTC for any excess costs for such similar supplies or services, and for any other costs incurred by RCTC as a result of the Uncured Breach. The Consultant shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

d. Except with respect to defaults of Subconsultants, the Consultant shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Consultant. If the failure to perform is caused by the default of a Subconsultant, and if such default arises out of causes beyond the control of both the Consultant and the Subconsultant, and without the fault or negligence of either of them, the Consultant shall not be liable for any excess costs for failure to perform, unless the supplies or

services to be furnished by the Subconsultant were obtainable from other sources in sufficient time to permit the Consultant to meet the required project completion schedule.

e. Payment for completed services or supplies delivered to and accepted by RCTC shall be at the contract price. RCTC may withhold from amounts otherwise due the Consultant for such completed services or supplies such sum as RCTC determines to be necessary to protect RCTC against loss because of outstanding liens of claims of former lien holders, or to reimburse RCTC for any other costs related to the Uncured Breach.

f. If, after notice of termination of this contract for cause, it is determined for any reason that an Uncured Breach did not exist, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the provisions for termination for convenience of RCTC.

g. The rights and remedies of RCTC provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this contract including, but not limited to, the right to specific performance.

h. Notwithstanding the above, RCTC may, without providing an opportunity to cure, terminate the contract in accordance with the timeframe set forth in Section 17 of the contract, if RCTC determines such action is in its best interest based on the nature of the Breach. Such actions shall not limit any of RCTC's remedies set forth above.

## **16. Disputes**

a. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by supplemental agreement shall be decided by RCTC's Deputy Executive Director, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Consultant. The decision of the RCTC Deputy Executive Director shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, Consultant mails or otherwise furnishes to the RCTC Deputy Executive Director a written appeal addressed to RCTC's Executive Director. The decision of RCTC Executive Director or duly authorized representative for the determination of such appeals shall be final and conclusive.

b. The provisions of this Paragraph shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged, provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Paragraph, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

c. Pending final decision of a dispute hereunder, Consultant shall proceed diligently with the performance of this Agreement and in accordance with the decision of RCTC's Deputy Executive Director. This "Disputes" clause does not preclude consideration of questions of law in connection

with decisions provided for above. Nothing in this Agreement, however, shall be construed as making final the decision of any RCTC official or representative on a question of law, which questions shall be settled in accordance with the laws of the State of California.

### **17. Lobbying**

See the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Consultants who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Offeror shall complete and submit with its bid/proposal the attached Certification Regarding Lobbying, and if applicable, the Standard Form-LLL, "Disclosure Form to Report Lobbying."

### **18. Energy Conservation**

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

### **19. Clean Water**

a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Consultant agrees to report each violation to RCTC and understands and agrees that RCTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

d. The Consultant further agrees that:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

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

## 20. Clean Air

a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Consultant agrees to report each violation to RCTC and understands and agrees that RCTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

b. The Consultant further agrees that:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

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

## 21. Recycled Products

Recovered Materials - The Consultant agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## 21. SPECIAL PROVISION FOR PROMOTING COVID-19 SAFETY

### Section 49. Centers for Disease Control and Prevention Order on Requirements for Persons to Wear Masks While on Conveyances and at Transportation Hubs.

(a) *Compliance with CDC Mask Order.* The Centers for Disease Control and Prevention (“CDC”) Order of January 29, 2021, titled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (“CDC Mask Order”), applies to this Agreement. One of the objectives of the CDC Mask Order is “[m]aintaining a safe and operating transportation system.” Consultant agrees that it will comply, and will require all subconsultants to comply, with the CDC Mask Order, to the extent the CDC Mask Order remains in effect.

(b) *Enforcement for non-compliance.* Consultant agrees that FTA and RCTC may take enforcement action for non-compliance with the CDC Mask Order, to the extent the CDC Mask Order remains in effect, including: (1) enforcement actions authorized by 49 U.S.C. § 5329(g); (2) referring Consultant to the CDC or other Federal authority for enforcement action; (3) enforcement actions authorized by 2 CFR §§ 200.339 – .340; and (4) any other enforcement action authorized by Federal law or regulation.



## 22. Safe Operation of Motor Vehicles

Pursuant to Federal Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party consultant to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

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

## 23. Notification to FTA.

- a. If a current or prospective legal matter that may affect the Federal Government emerges, the Consultant must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which this Agreement is being performed. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- b. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- c. *Additional Notice to U.S. DOT Inspector General.* The Consultant must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Commission located, if Consultant has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Consultant. In this paragraph, “promptly” means to refer information without delay and without change.

**24. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

Consultant shall not 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 funded under this Contract. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

DRAFT

**DISCLOSURE OF LOBBYING ACTIVITIES - EXHIBIT G**

**EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES**

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<br/> <input type="checkbox"/> b. grant<br/> <input type="checkbox"/> c. cooperative agreement<br/> <input type="checkbox"/> d. loan<br/> <input type="checkbox"/> e. loan guarantee<br/> <input type="checkbox"/> f. loan insurance</p>  | <p><b>2. Status of Federal Action:</b></p> <p><input type="checkbox"/> a. bid/offer/application<br/> <input type="checkbox"/> b. initial award<br/> <input type="checkbox"/> c. post-award</p>   | <p><b>3. Report Type:</b></p> <p><input type="checkbox"/> a. initial<br/> <input type="checkbox"/> b. material change</p> <p><b>For Material Change Only:</b><br/>         year _____ quarter _____<br/>         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<br/>         Tier _____, if known</p>  | <p><b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b></p>  |  |
| <p><b>Congressional District, if known</b></p>  |  |  |
| <p><b>6. Federal Action:</b> <span style="border: 1px solid red; padding: 5px; display: inline-block; transform: rotate(-2deg); color: red; font-weight: bold;">Not Applicable to Mark Thomas</span> <b>on:</b></p>   |  |  |
| <p><b>8. Federal Action:</b></p>  | <p><b>9. Award Amount, if known:</b></p>   |  |
| <p><b>10. Name and Address of Lobby Entity</b><br/>         (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><br/>         (including address if different from No. 10)<br/>         (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<br/> <input type="checkbox"/> b. one-time fee<br/> <input type="checkbox"/> c. commission<br/> <input type="checkbox"/> d. contingent fee<br/> <input type="checkbox"/> e. deferred<br/> <input type="checkbox"/> f. other, specify _____</p> |  |
| <p><b>13. Form of Payment (check all that apply):</b></p> <p><input checked="" type="checkbox"/> a. cash<br/> <input type="checkbox"/> b. in-kind; specify: nature _____<br/>         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 12:</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: <u><i>Darin Johnson</i></u></p> <p>Print Name: <u>Darin Johnson, PE</u></p> <p>Title: <u>Associate Principal</u></p> <p>Telephone No.: <u>(805) 701-9427</u>      Date: <u>6/20/2024</u></p>  |  | <p style="text-align: center;">Authorized for Local Reproduction<br/>Standard Form - LLL</p>   |
| <p><b>Federal Use Only:</b></p>   |  |  |

Standard Form LLL Rev. 04-28-06

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EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

**1. Type of Federal Action:**  
 a. contract  
 b. grant  
 c. cooperative agreement  
 d. loan  
 e. loan guarantee  
 f. loan insurance

**2. Status of Federal Action:**  
 a. bid/offer/application  
 b. initial award  
 c. post-award

**3. Report Type:**  
 a. initial  
 b. material change  
**For Material Change Only:**  
 year \_\_\_\_\_ quarter \_\_\_\_\_  
 date of last report \_\_\_\_\_

**4. Name and Address of Reporting Entity**  
 Prime  Subawardee  
 Tier \_\_\_\_\_, if known  
 Congressional District, if known

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**  
 Congressional District, if known

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**  
 CFDA Number, if applicable

**8. Federal Action Number, if known:**

**10. Name and Address of Reporting Entity (If individual, enter name, first name, MI)**  
 (attach Continuation Sheet(s) if necessary)

**12. Amount of Payment (check all that apply)**  
 \$ \_\_\_\_\_  actual  planned

**13. Form of Payment (check all that apply):**  
 a. cash  
 b. in-kind; specify: nature \_\_\_\_\_  
 Value \_\_\_\_\_

**14. Type of Payment (check all that apply)**  
 a. retainer  
 b. one-time fee  
 c. commission  
 d. contingent fee  
 e. deferred  
 f. other, specify \_\_\_\_\_

**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 12:**  
 (attach Continuation Sheet(s) if necessary)

**16. Continuation Sheet(s) attached:** Yes  No

**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.**

Signature: *Daniel A. Calvillo*  
 Print Name: Daniel Calvillo  
 Title: President  
 Telephone No.: 909-484-4200 Date: 6/12/24

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## Agreement No. 24-31-123-00

**PROFESSIONAL SERVICES AGREEMENT  
WITH PROPOSITION 1B, FTA AND FHWA FUNDING ASSISTANCE**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
PSOMAS  
FOR ON-CALL RIGHT OF WAY  
ENGINEERING AND SURVEYING SERVICES**

**Parties and Date.**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2024, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and Psomas ("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 on-call professional consulting services provided under this Agreement may be State Proposition 1B funds, Federal Highway Administration Funds ("FHWA") administered by the California Department of Transportation ("Caltrans"), and/or funds from the Federal Transit Administration ("FTA").

E. Commission is the County Transportation Commission for Riverside County, with responsibility for, among other things, implementing or allocating funding for various transportation programs and projects throughout the County of Riverside ("County").

F. 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.

G. 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.

H. Consultant desires to perform and assume responsibility for the provision of certain on-call right of way engineering and surveying services in the County of Riverside, California, required by Commission, for Commission's or RCA's benefit, on the terms and conditions set forth in this Agreement. Services shall be provided 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.

I. The 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 engineering and surveying 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 fully executed 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 the Schedule of Services set forth in a Task Order. 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.

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 Federal and State process reviews. In addition, the applicable federal agency, or Caltrans, may require that prior to performance of any work for which Federal or State reimbursement is requested and provided, that said federal agency or Caltrans must give to Commission an "Authorization to Proceed".

4. Audit Procedures. Consultant and 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 23 and 24 of this Agreement.

5. Term.

5.1 This Agreement shall go into effect on the date first set forth above, contingent upon approval by Commission. This Agreement shall end three years from the date set forth above. All Task Order work should be completed within the term.

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 Sean Smith 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: Sean Smith, William Estepa, Tim Garcia, Dannie Green, and Lam Le or as otherwise identified in the Task Order.

9. Standard of Care; Licenses. Consultant represents and maintains that it is skilled in the professional calling necessary to perform all Services, duties and obligations required by this Agreement to fully and adequately complete the Project. Consultant shall perform the Services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the



State of California. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents and warrants to the Commission that its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the Commission or RCA, 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 or RCA. 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.

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, 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 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.

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. 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, 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.

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. 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, or any cost proposal included as part of a Task Order ("Cost Proposal") unless additional reimbursement is provided for by written amendment. The overhead rates included in the attached Exhibit "C" shall be fixed for the term of the Master Agreement, and shall not be subject to adjustment, unless required by the applicable funding source. 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, this Agreement or any Task Order is required, the Agreement time or actual costs reimbursable by Commission shall be adjusted by written 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.

19.2 In addition to the allowable incurred costs, Commission shall pay Consultant a fixed fee to be set forth in each Task Order (“Fixed Fee”). The Fixed Fee is nonadjustable for each Task Order, except in the event of a significant change in the Scope of Services, and such adjustment is made by written amendment.

19.3 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.

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

19.5 Progress payments shall be made monthly in arrears based on Services provided and allowable incurred costs. A pro rata portion of the Fixed Fee shall be included in the monthly progress payments. 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.

19.6 No payment shall be made prior to approval of any Services, nor for any Services performed prior to approval of this Agreement.

19.7 Consultant shall be reimbursed, as promptly as fiscal procedures will permit upon receipt by Commission’s Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 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

19.8 The total amount payable by Commission, including the Fixed Fee, shall not exceed the amount set forth in each Task Order.

19.9 Commission has or will enter into four (4) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement. The other On-Call Right of Way Engineering and Surveying Services Task Order Contracts are David Evans and Associates (24-31-076-00), GUIDA (24-31-121-00) and Mark Thomas and Company, (24-31-122-00). The total amount payable by Commission for the four Task Order Contracts shall not exceed a cumulative maximum total value of Three Million Two Hundred Thousand Dollars (\$3,200,000) ("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 Engineering and Surveying Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the On-Call Right of Way Engineering and Surveying Services Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the On-Call Right of Way Engineering and Surveying Services 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.

19.10 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.

19.11 Consultant shall not be reimbursed for any expenses unless authorized in writing by the Commission's Contract Administrator.

19.12 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.

21.1 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.

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 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.

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 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 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.

21.6 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.

21.7 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.

21.8 Consultant may not terminate this Agreement except for cause.

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, 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, FHWA, 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 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 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.

25.3 Consultant shall pay its subconsultants within ten (10) 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 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" or in a Task Order. 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 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 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.

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 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.

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

## 27. Labor Code Requirements.

### 27.1 Prevailing Wages.

(a) 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) Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Section.

(c) 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>.

(d) 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. Since 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.

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

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 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.

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 sole risk.

28.2 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 or RCA, 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 and RCA further are 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 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 or RCA.

28.4 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.

29. Indemnification. To the fullest extent permitted by law, Consultant shall defend (with counsel of Commission's choosing), 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, 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, 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, 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.

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*: \$1,000,000 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 \$2,000,000 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, RCA, 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, 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, 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 and RCA (if agreed to in a written contract or agreement) before the Commission's or RCA'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, 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.

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, 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.

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 and RCA 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.

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.

(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 neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. 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 contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project

resulting from this contract.

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 Agreement 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 "G", 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 3.23.5 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 or RCA. 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 or RCA 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 and RCA reserve 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 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.

37.2. 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.

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.

40. 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:**

Psomas  
1650 Spruce Street  
Suite 400  
Riverside, CA 92507  
Attn: Sean Smith

**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.

41. 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.

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

43. 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.

44. 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.

45. Provisions Applicable When State Funds or Federal Funds Are Involved. When funding for the Services under a Task Order is 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. 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.

46. 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.

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

48. 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.

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

50. Attorney Client Privilege. The Parties recognize that, during the Project, the Commission and its attorneys will engage in communication that gives rise to an attorney client privilege of confidentiality ("Confidential Communication"). Given the nature of the work done by Consultant for the Commission, it may be necessary for the Consultant to participate in Confidential Communications. To the extent that (i) the Consultant is a party to any Confidential Communication, and (ii) a third party seeks discovery of such communications, then the Consultant shall be deemed to be an agent of the Commission solely for purposes of preserving any attorney client privilege in the relevant Confidential Communication. Any such attorney client privilege shall be held by the Commission and the Consultant is not authorized to waive that privilege or, otherwise, disclose such Confidential Communication except as set forth below. This Section is intended to maintain the privilege in any privileged Confidential Communications that are (1) between and among Commission, Consultant, and Commission's attorneys; (2) between Consultant (on behalf of the Commission) and Commission's attorneys; (3) Confidential Communications that occur in Closed Session meetings wherein the Commission, the Commission's attorneys and Consultant are present; and (4) between Commission and Consultant wherein the substance of the Confidential Communication is conveyed to/from the Consultant.



Consultant may disclose a Confidential Communication to the extent such disclosure is required by legal process, by a court of competent jurisdiction or by any other governmental authority, provided that any such disclosure shall be limited to the specific part of the Confidential Communication required to be disclosed and provided that Consultant first comply with the requirements set forth in this paragraph. As soon as practicable after Consultant becomes aware that it is required, or may become required, to disclose the Confidential Communication for such reason, Consultant shall notify the Commission in writing, in order to allow the Commission to pursue legal remedies designed to limit the Confidential Communication required to be disclosed or to assure the confidential treatment of the disclosed information following its disclosure. Consultant shall cooperate with the Commission, on a reimbursable basis, to assist the Commission in limiting the scope of disclosure or assuring the confidential treatment of any disclosed information.

51. 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.

52. 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.

53. 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.

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

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

**[Signatures on following page]**

**SIGNATURE PAGE  
TO  
PROFESSIONAL SERVICES AGREEMENT  
WITH PROPOSITION 1B, FTA AND FHWA FUNDING ASSISTANCE FOR  
RIGHT OF WAY ENGINEERING AND SURVEYING SERVICES**

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

|   |  |
|---|--|
| <p><b>RIVERSIDE COUNTY<br/>TRANSPORTATION COMMISSION</b></p> <p>By: _____<br/>Aaron Hake</p> <p><i>Approved as to Form:</i></p> <p>By: _____<br/>Best, Best &amp; Krieger LLP<br/>General Counsel</p> | <p><b>CONSULTANT<br/>PSOMAS</b></p> <p>By: _____<br/>Signature</p> <p>_____ Name</p> <p>_____ Title</p> <p><b>ATTEST:</b></p> <p>By: _____</p> <p>Its: _____</p> |
|---|--|

\* 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.

**TO BE INSERTED FROM RFQ:**

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

**EXHIBIT "E" - CONSULTANT DBE COMMITMENT**

**EXHIBIT "F" - FTA PROVISIONS**

**EXHIBIT "G" – LOBBYING ACTIVITIES DISCLOSURE**

**TO BE INSERTED FROM CONSULTANT PROPOSAL:**

**EXHIBIT "C"- COMPENSATION AND PAYMENT**

**DRAFT**

## SCOPE OF SERVICES

### Right of Way Engineering and Surveying Services

## SCOPE OF SERVICES

The Riverside County Transportation Commission (Commission) and the Western Riverside County Regional Conservation Authority (RCA) have procured one or more Consultants (Consultant or Right of Way Engineering and Surveying Services Consultant) to provide Right of Way Engineering and Surveying Services on an On-Call/as needed basis in support of current Commission and RCA Projects, Measure A Projects, and projects done in partnership with other agencies, pursuant to Task Orders issued in the sole discretion of the Commission and/or the RCA.

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

Such Right of Way Engineering and Surveying Services may include, but are not limited to, the following work programs, and/or comply with applicable requirements below:

1. Consultant shall provide right of way engineering and survey services including but not limited to: preparing Boundary Maps, Monumentation Maps, Survey Control Maps, Records of Survey, Lot Line Adjustments, Subdivision Maps, Legal Descriptions and Plats, Parcel Maps, Appraisal Maps, Certificates of Compliance, staking/marketing of parcels and rights of way for appraisal and utility potholing purposes, and other right of way engineering as necessary.
2. Consultant shall prepare Boundary, Monumentation, and Survey Control Maps showing all parcels and easement boundaries and their relationship to the land net monuments used to define them. In cases where the Commission is working in conjunction with the California Department of Transportation (Caltrans), these maps shall conform to the Caltrans District 8 Right of Way Engineering Quality Assurance Plan for the Preparation of Documents and Maps.
3. Consultant shall utilize appropriate land surveying and land title practices to:
  - Establish all property and easement boundaries within and overlapping the project area
  - Perform site reconnaissance and monument recovery
  - Establish or reestablish all monumentation required by state law and local regulations

- File a Record of Survey, if necessary, to comply with the Land Surveyors Act. The preparation, filing, and associated fees will be the responsibility of Consultant.

All data, maps, and documents produced by Consultant shall be subject to approval and acceptance by the Commission's or the RCA's Project Manager, and in certain cases, Caltrans. In the event of non-acceptance due to errors or omissions, Consultant shall have seven calendar days to make corrections and return maps and documents to the Commission and/or the RCA. Final acceptance will occur only after the work product has been determined to conform to the scope of work and requirements.

4. All surveying and mapping work affecting the State of California Right of Way at any location, or along any route, shall be in accordance with state law and local regulation, and the procedures and instructions contained in the Caltrans Right of Way Manual, the Caltrans Surveys Manual (Manuals), and the Caltrans District 8 Right of Way Engineering Quality Assurance Plan for the Preparation of Documents and Maps. All right of way acquired by the Commission on for state highway system projects will be subject to acceptance and transfer to the State.
5. Consultant shall appoint a Survey Manager who is a licensed Land Surveyor or Licensed Civil Engineer, authorized to practice land surveying by the State of California. The Survey Manager will be responsible for all work performed by Consultant for the Commission or the RCA.
6. Deliverables shall typically consist of one (1) electronic copy.
7. If any legal issues exist during the course of an assignment, Consultant shall request legal opinion. The Commission's or RCA's legal counsel shall render all legal opinions.
8. Consultant shall utilize the services of Commission's and/or RCA's on-call consultants supplemental work required for the effective delivery of Consultant's services to the Commission or the RCA. Fees charged by Commission's or RCA's on-call consultants shall be paid directly by the Commission or the RCA.

Any and all work submitted by the Consultant shall be reviewed by the Consultant LS/LCE and be complete and final in strict accordance with the California Board of Professional Engineers and Land Surveyors Rule 476, Subsection (e), and signed and sealed in accordance with Section 8761 of the Professional Land Surveyors Act.

As it pertains to projects affecting the State Highway System, work shall not be considered complete until Caltrans has approved the work for inclusion into the Right of Way Engineering files. Caltrans does not assume responsibility for the Consultant work after inclusion into the R/W Engineering files, Consultant shall retain responsibility for all work performed and submitted.

Lot Line Adjustments, Parcel Maps, Surveys and Legal Descriptions work required under this Scope of Work may include field surveying, legal description, map preparation and the marking of properties for utility potholing, appraisal, and boundary determination purposes or other right of way engineering required for transportation purposes. Surveys prepared in connection with Caltrans projects shall be performed in accordance with the current Manuals. Work not covered by the Manuals or not associated with Caltrans projects shall be performed in accordance with accepted professional surveying standards.

Survey points, lines, and monuments shall be established, marked, identified, and referenced. If required, Records of Survey shall be prepared and filed in accordance with Chapter 15 (Land Surveyors Act) of the Business and Professions Code. A copy of original survey documents resulting from contract work, which may include field notes, adjustment calculations, final results, and intermediate documents, may be required to be delivered and will become the property of Commission or RCA.

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**EXHIBIT "B"**

**SAMPLE TASK ORDER FORM**

Task Order No. \_\_\_\_\_

Contract: [INSERT NAME OF CONTRACT]

Consultant: [INSERT NAME OF CONSULTANT]

**The Consultant is hereby authorized to perform the following work subject to the provisions of the Contract identified above:**

**List funding sources:** \_\_\_\_\_

**List any attachments:** (Please provide if any.)

**Dollar Amount of Task Order:** Not to exceed \$ \_\_\_\_\_ .00

**Completion Date:** \_\_\_\_\_, 202\_\_

The undersigned consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Contract identified above and will accept as full payment therefore the amount shown above.

**Riverside County Transportation Commission**

**Consultant**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

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

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

**EXHIBIT "C"**  
**COMPENSATION SUMMARY<sup>1</sup>**

| FIRM                            | PROJECT TASKS/ROLE                              | COST                   |
|---------------------------------|---|------------------------|
| <b><i>Prime Consultant:</i></b> |   |                        |
| Psomas                          | Right of Way Engineering and Surveying Services | \$ 3,200,000.00        |
| <b><i>Sub Consultants:</i></b>  |   |                        |
| CL Surveying and Mapping, Inc,  | Project Surveyor                                | TBD                    |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
| <b>TOTAL COSTS</b>              |   | <b>\$ 3,200,000.00</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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## EXHIBIT "D"

### FHWA/ 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 unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. 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.

C. If this Agreement is federally funded, the Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

D. If this Agreement is federally funded, the Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations,

including employment practices when the Agreement covers a program whose goal is employment.

## **2. DEBARMENT AND SUSPENSION CERTIFICATION**

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.

## **3. 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.

## **4. PROMPT PAYMENT**

Consultant agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the

prime contractor 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.

## **5. RELEASE OF RETAINAGE**

No retainage will be withheld by the Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

## **6. 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.

## **7. DBE PARTICIPATION**

Caltrans has developed a statewide DBE program pursuant to 49 C.F.R. Part 26. The requirements and procedures, as applicable, of the Caltrans DBE program are hereby incorporated by reference into this Agreement. Even if no DBE participation will be reported, Consultant shall complete Exhibits "E" of this Agreement in compliance with the Caltrans DBE program, a final utilization report in the form provided by the Commission, and any other Caltrans required DBE forms.

A. This Agreement is subject to Title 49, Part 26 of the Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." By obtaining DBE participation on this Agreement, Consultant will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. This Agreement has a 13% DBE goal, and DBE goals may be included with each task order request for proposals. If a DBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met. A DBE is a firm meeting the definition of a DBE as specified in 49 CFR.

C. DBE and other small businesses (SB), as defined in Title 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Consultant, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the contractor 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, Caltrans or the Department of Transportation deems appropriate.

D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

E. A DBE may be terminated only with prior written approval from the Commission and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting Commission consent for the termination, the prime consultant must meet the procedural requirements specified in 49 CFR 26.53(f).

## **8. DBE PARTICIPATION GENERAL INFORMATION**

It is Consultant's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Caltrans DBE program. Particular attention is directed to the following:

A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).

B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.

C. A DBE joint-venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint-venture commensurate with its ownership interest.

D. A DBE must perform a commercially useful function, pursuant to 49 CFR 26.55 that is, must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work, as more fully described in section 8 below.

E. The Consultant shall list only one subcontractor for each portion of work as defined in the Consultant's bid/proposal and all DBE subcontractors should be listed in the Consultant's bid/cost proposal list of subcontractors.

F. A Consultant who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

## **9. COMMERCIALLY USEFUL FUNCTION**

A. A DBE performs a commercially useful function 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 commercially useful function, 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. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

B. A DBE does not perform a commercially useful function 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.

C. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement 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 commercially useful function.

## **10. DBE CERTIFICATION AND DE-CERTIFICATION STATUS**

If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify the Contractor in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the Contractor in writing with the date of certification. Any changes should be reported to the Commission's Contract Administrator within 30 days.

## **11. DBE RECORDS**

A. The Contractor shall maintain records of materials purchased and/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 prime Contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the most current version of the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE)," CEM- 2402F (Exhibit 17-F in Chapter 17 of the LAPM), certified correct by the Contractor or the Contractor's authorized representative and shall be furnished to the Commission's Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Contractor when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE)" is submitted to the Commission's Contract Administrator.

a. Prior to the fifteenth of each month, the Contractor shall submit documentation to the Commission's Contract Administrator showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Commission's Contract Administrator showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

b. The Contractor shall also submit to the Commission's Contract Administrator documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans "Monthly DBE Trucking Verification," CEM-2404(F) form provided to the Contractor by the Commission's Contract Administrator.

## **12. REPORTING MATERIAL OR SUPPLIES PURCHASED FROM DBEs**

When Reporting DBE Participation, Material or Supplies purchased from DBEs may count as follows:

A. If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count 60 % of the cost of the materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, are bought, kept in stock, and regularly

sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

### **13. REPORTING PARTICIPATION OF DBE TRUCKING COMPANIES**

When Reporting DBE Participation, Participation of DBE trucking companies may count as follows:

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.

B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement.

C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.

D. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.

E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

F. For the purposes of this section, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives

the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

#### **14. 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.

#### **15. 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).

#### **16. NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

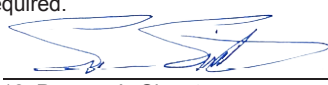
In accordance with Public Contract Code Section 10296, and by signing this Agreement, Consultant certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, 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.



EXHIBIT E

EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: Riverside County Transportation Commission 2. Contract DBE Goal: 13%  
 3. Project Description: On-Call Right-of-Way Engineering and Surveying Services  
 4. Project Location: Riverside County, CA  
 5. Consultant's Name: Psomas 6. Prime Certified DBE:

| 7. Description of Work, Service, or Materials Supplied   | 8. DBE Certification Number   | 9. DBE Contact Information  | 10. DBE %                                      |
|--|---|---|--|
| Land surveying support services  | 38284   | CL Surveying and Mapping, Inc.   Lam Le, PLS<br>400 East Rincon St., Ste. 202, Corona, CA 92879<br>909.484.4200   Lam@cl-survey.com | 13%  |
|  |   |   |  |
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|  |   |   |  |
|  |   |   |  |
| <b>Local Agency to Complete this Section</b>   |   |   | 11. TOTAL CLAIMED DBE PARTICIPATION<br><br>13% |
| 17. Local Agency Contract Number: _____<br>18. Federal-Aid Project Number: _____<br>19. Proposed Contract Execution Date: _____<br><br>Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. | IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.<br><br><br>12. Preparer's Signature<br>Sean Smith, PLS<br>14. Preparer's Name<br>Vice President<br>16. Preparer's Title<br><br>06/20/2024<br>13. Date<br>909.800.8911<br>15. Phone |   |  |
| 20. Local Agency Representative's Signature  | 21. Date  |   |  |
| 22. Local Agency Representative's Name   | 23. Phone   |   |  |
| 24. Local Agency Representative's Title  |   |   |  |

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

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

## **FTA FUNDING REQUIREMENTS (Non-construction/maintenance work)**

As used herein, "RCTC" shall have the same meaning as the "Commission." The term "contract" or "Contract" shall have the same meaning as the "Agreement."

### **1. No Obligation by the Federal Government**

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

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

### **2. Program Fraud and False or Fraudulent Statements or Related Acts**

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

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

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

### **3. Access to Records**

The Consultant agrees to the following access to records requirements:

## EXHIBIT F

- a. To provide RCTC, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Consultant access to Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- b. To make available in the case of a contract for a capital project or improvement, as defined above and awarded by other than competitive bidding in accordance with 49 U.S.C. 5325(a), records related to the contract to RCTC, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- c. To maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Consultant agrees to maintain same until RCTC, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- d. To permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

### **4. Federal Changes**

The Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between RCTC and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract.

### **5. Civil Rights**

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332 and 49 CFR part 21, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

## EXHIBIT F

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623, Federal transit law at 49 U.S.C. § 5332, the Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against individuals on the basis of disability, and that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

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

## 6. FTA Disadvantaged Business Enterprise (DBE) Requirements

A. **General DBE Requirements:** In accordance with Federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), Commission has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs" (the "Regulations"). This RFP is subject to these stipulated regulations. In order to ensure that Commission achieves its overall DBE Program goals and objectives, Commission encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds.

It is the policy of the Commission to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

B. **Discrimination:** Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Any terms used herein that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations.

C. **Commission's Race-Neutral DBE Program:** A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, Commission does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. There is no FTA DBE goal on this Project.

Consultant shall not be required to achieve a specific level of DBE participation as a condition of contract compliance in the performance of this DOT-assisted contract. However, Consultant shall adhere to race-neutral DBE participation commitment(s) made at the time of award.

D. **Race-Neutral DBE Submissions and Ongoing Reporting Requirements (Post-Award):** At termination of the Contract, the successful Consultant shall complete and submit to

## EXHIBIT F

Commission a “DBE Race-Neutral Participation Listing” in the form provided by Commission. In the event DBE(s) are utilized in the performance of the Agreement, Consultant shall comply with applicable reporting requirements.

E. Performance of DBE Subconsultants: DBE subconsultants listed by Consultant in its “DBE Race-Neutral Participation Listing” submitted at the time of proposal shall perform the work and supply the materials for which they are listed, unless Consultant has received prior written authorization from Commission to perform the work with other forces or to obtain the materials from other sources. Consultant shall provide written notification to Commission in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

F. DBE Certification Status: If a listed DBE subconsultant is decertified during the life of this Agreement, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a non-DBE subconsultant becomes a certified DBE during the life of this Agreement, the DBE subconsultant shall notify Consultant in writing with the date of certification. Consultant shall furnish the written documentation to Commission in a timely manner. Consultant shall include this requirement in all subcontracts.

G. Consultant’s Assurance Clause Regarding Non-Discrimination: In compliance with State and Federal anti-discrimination laws, Consultant shall affirm that it will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, Consultant shall affirm that they will consider, and utilize subconsultants and vendors, in a manner consistent with non-discrimination objectives.

H. Violations: Failure by the selected Consultant(s) to carry out these requirements shall be a material breach of the contract to be awarded pursuant to this RFP, which may result in the termination of the contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the Consultant from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

I. Prompt Payment: Consultant shall pay its subconsultants for satisfactory performance of their contracts no later than 30 days from receipt of each payment Commission makes to the Consultant. 49 C.F.R. § 26.29(a), unless a shorter period is provided in the contract.

J. Compliance with DBE Requirements Contained in FTA Provisions: Consultant shall comply with all DBE reporting and other requirements contained in this Agreement.

## **7. Incorporation of Federal Transit Administration (FTA) Terms**

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

## **8. Debarment and Suspension.**

The Consultant agrees to the following:

(1) It will comply with the following requirements of 2 CFR Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200.

(2) It will not enter into any "covered transaction" (as that phrase is defined at 2 CFR §§ 180.220 and 1200.220) with any subconsultant whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by— (i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200; (ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180; and (iii) Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended recipients or third party participants.

(3) It will review the U.S. GSA "System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs," if required by U.S. DOT regulations, 2 CFR Part 1200.

## **9. ADA Access Requirements**

The Consultant shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794; 49 USC Section 5301(d).

## **10. Fly America**

To the extent applicable to the Services, the Consultant agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of Federal funds and their consultants are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of

compliance with the Fly America requirements. The Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

### **11. Cargo Preference - Use of United States-Flag Vessels**

To the extent applicable to the Services, the Consultant agrees:

1. To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
2. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Consultant in the case of a subconsultant's bill-of-lading.)
3. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**11. Buy America – Not applicable.**

**12. Employment Provisions**

To the extent applicable to the Services, Consultant shall comply with the following:

- A. Equal Employment Opportunity — Not applicable.
- B. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c) — Not applicable.
- C. Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333) —Not applicable.

#### **D. Release of Retainage**

No retainage will be withheld by the RCTC from progress payments due Consultant. Retainage by Consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating Consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions 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 or deficient subconsultant performance, or noncompliance by a subconsultant.

### **13. Termination for Convenience**

RCTC may terminate the Agreement for convenience in accordance with the terms of the Agreement.

After such termination, the Consultant shall submit a final termination settlement proposal to RCTC as directed. If the Consultant fails to submit a proposal within the time allowed, RCTC may determine, on the basis of information available, the amount, if any due the Consultant because of the termination and shall pay the amount determined. After the Consultant's proposal is received, RCTC and Consultant shall negotiate a fair and equitable settlement and the contract will be modified to reflect the negotiated agreement. If agreement cannot be reached, RCTC may issue a final determination and pay the amount determined. If the Consultant does not agree with this final determination or the determination resulting from the lack of timely submission of a proposal, the Consultant may appeal under the Disputes clause.

### **14. Administrative and Contractual Remedies on Breach; Termination for Cause**

a. The Consultant may be declared in breach of this Agreement ("Breach") if the Consultant fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or if the Consultant fails to perform any of the other provisions of the contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms. In case of any of the foregoing, RCTC shall notify the Consultant of the Breach, and the Consultant shall have a period of ten (10) days (or such longer period as RCTC may authorize in writing) after receipt of notice from RCTC to cure the Breach.

b. RCTC may, by written notice of termination to the Consultant specifying the effective date thereof, terminate the whole or any part of this contract, in the case of a Breach that is not cured within the timeframe set forth in (a) above ("Uncured Breach").

c. If the contract is terminated in whole or in part for an Uncured Breach, RCTC may procure upon such terms and in such manner as RCTC may deem appropriate, supplies or services similar to those so terminated, or may complete the services with its own forces. The Consultant shall be liable to RCTC for any excess costs for such similar supplies or services, and for any other costs incurred by RCTC as a result of the Uncured Breach. The Consultant shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

d. Except with respect to defaults of Subconsultants, the Consultant shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Consultant. If the failure to perform is caused by the default of a Subconsultant, and if such default arises out of causes beyond the control of both the Consultant and the Subconsultant, and without the fault or negligence of either of them, the Consultant shall not be liable for any excess costs for failure to perform, unless the supplies or

## EXHIBIT F

services to be furnished by the Subconsultant were obtainable from other sources in sufficient time to permit the Consultant to meet the required project completion schedule.

e. Payment for completed services or supplies delivered to and accepted by RCTC shall be at the contract price. RCTC may withhold from amounts otherwise due the Consultant for such completed services or supplies such sum as RCTC determines to be necessary to protect RCTC against loss because of outstanding liens of claims of former lien holders, or to reimburse RCTC for any other costs related to the Uncured Breach.

f. If, after notice of termination of this contract for cause, it is determined for any reason that an Uncured Breach did not exist, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the provisions for termination for convenience of RCTC.

g. The rights and remedies of RCTC provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this contract including, but not limited to, the right to specific performance.

h. Notwithstanding the above, RCTC may, without providing an opportunity to cure, terminate the contract in accordance with the timeframe set forth in Section 17 of the contract, if RCTC determines such action is in its best interest based on the nature of the Breach. Such actions shall not limit any of RCTC's remedies set forth above.

### **16. Disputes**

a. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by supplemental agreement shall be decided by RCTC's Deputy Executive Director, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Consultant. The decision of the RCTC Deputy Executive Director shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, Consultant mails or otherwise furnishes to the RCTC Deputy Executive Director a written appeal addressed to RCTC's Executive Director. The decision of RCTC Executive Director or duly authorized representative for the determination of such appeals shall be final and conclusive.

b. The provisions of this Paragraph shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged, provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Paragraph, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

c. Pending final decision of a dispute hereunder, Consultant shall proceed diligently with the performance of this Agreement and in accordance with the decision of RCTC's Deputy Executive Director. This "Disputes" clause does not preclude consideration of questions of law in connection

with decisions provided for above. Nothing in this Agreement, however, shall be construed as making final the decision of any RCTC official or representative on a question of law, which questions shall be settled in accordance with the laws of the State of California.

### **17. Lobbying**

See the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Consultants who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Offeror shall complete and submit with its bid/proposal the attached Certification Regarding Lobbying, and if applicable, the Standard Form-LLL, "Disclosure Form to Report Lobbying."

### **18. Energy Conservation**

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

### **19. Clean Water**

a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Consultant agrees to report each violation to RCTC and understands and agrees that RCTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

d. The Consultant further agrees that:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

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

## 20. Clean Air

a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Consultant agrees to report each violation to RCTC and understands and agrees that RCTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

b. The Consultant further agrees that:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

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

## 21. Recycled Products

Recovered Materials - The Consultant agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## 21. SPECIAL PROVISION FOR PROMOTING COVID-19 SAFETY

### Section 49. Centers for Disease Control and Prevention Order on Requirements for Persons to Wear Masks While on Conveyances and at Transportation Hubs.

(a) *Compliance with CDC Mask Order.* The Centers for Disease Control and Prevention (“CDC”) Order of January 29, 2021, titled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (“CDC Mask Order”), applies to this Agreement. One of the objectives of the CDC Mask Order is “[m]aintaining a safe and operating transportation system.” Consultant agrees that it will comply, and will require all subconsultants to comply, with the CDC Mask Order, to the extent the CDC Mask Order remains in effect.

(b) *Enforcement for non-compliance.* Consultant agrees that FTA and RCTC may take enforcement action for non-compliance with the CDC Mask Order, to the extent the CDC Mask Order remains in effect, including: (1) enforcement actions authorized by 49 U.S.C. § 5329(g); (2) referring Consultant to the CDC or other Federal authority for enforcement action; (3) enforcement actions authorized by 2 CFR §§ 200.339 – .340; and (4) any other enforcement action authorized by Federal law or regulation.

## 22. Safe Operation of Motor Vehicles

Pursuant to Federal Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party consultant to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

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

## 23. Notification to FTA.

- a. If a current or prospective legal matter that may affect the Federal Government emerges, the Consultant must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which this Agreement is being performed. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- b. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- c. *Additional Notice to U.S. DOT Inspector General.* The Consultant must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Commission located, if Consultant has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Consultant. In this paragraph, “promptly” means to refer information without delay and without change.

**24. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

Consultant shall not 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 funded under this Contract. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

DRAFT

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

**1. Type of Federal Action:**  
 a. contract  
 b. grant  
 c. cooperative agreement  
 d. loan  
 e. loan guarantee  
 f. loan insurance

**2. Status of Federal Action:**  
 a. bid/offer/application  
 b. initial award  
 c. post-award

**3. Report Type:**  
 a. initial  
 b. material change  
**For Material Change Only:**  
 year \_\_\_\_\_ quarter \_\_\_\_\_  
 date of last report \_\_\_\_\_

**4. Name and Address of Reporting Entity**  
 Prime  Subawardee  
 Tier \_\_\_\_\_, if known  
 Congressional District, if known \_\_\_\_\_

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**  
 Congressional District, if known \_\_\_\_\_

**6. Federal Department/Agency:** \_\_\_\_\_

**7. Federal Program Name/Description:**  
 CFDA Number, if applicable \_\_\_\_\_

**8. Federal Action Number, if known:** \_\_\_\_\_

**9. Award Amount, if known:** \_\_\_\_\_

**10. Name and Address of Lobby Entity**  
 (If individual, last name, first name, MI) \_\_\_\_\_  
 (attach Continuation Sheet(s) if necessary)

**11. Individuals Performing Services**  
 (including address if different from No. 10)  
 (last name, first name, MI) \_\_\_\_\_

**12. Amount of Payment (check all that apply)**  
 \$ \_\_\_\_\_  actual  planned


**13. Form of Payment (check all that apply):**  
 a. cash  
 b. in-kind; specify: nature \_\_\_\_\_  
 Value \_\_\_\_\_

**14. Type of Payment (check all that apply)**  
 a. retainer  
 b. one-time fee  
 c. commission  
 d. contingent fee  
 e. deferred  
 f. other, specify \_\_\_\_\_

**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 12:**  
 (attach Continuation Sheet(s) if necessary)

**16. Continuation Sheet(s) attached:** Yes  No

**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.**

Signature:   
 Print Name: Sean Smith, PLS  
 Title: Vice President  
 Telephone No.: 909 800-8911 Date: 06/20/2024

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EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

|  |                                   |                                     |   |                                  |                    |
|--|-----------------------------------|-------------------------------------|---|----------------------------------|--------------------|
| <b>1. Type of Federal Action:</b>  |                                   | <b>2. Status of Federal Action:</b> |   | <b>3. Report Type:</b>           |                    |
| <input type="checkbox"/>   | a. contract                       | <input type="checkbox"/>            | a. bid/offer/application  | <input type="checkbox"/>         | a. initial         |
| <input type="checkbox"/>   | b. grant                          | <input type="checkbox"/>            | b. initial award  | <input type="checkbox"/>         | b. material change |
| <input type="checkbox"/>   | c. cooperative agreement          | <input type="checkbox"/>            | c. post-award   | <b>For Material Change Only:</b> |                    |
| <input type="checkbox"/>   | d. loan                           |                                     |   | year _____ quarter _____         |                    |
| <input type="checkbox"/>   | e. loan guarantee                 |                                     |   | date of last report _____        |                    |
| <input type="checkbox"/>   | f. loan insurance                 |                                     |   |                                  |                    |
| <b>4. Name and Address of Reporting Entity</b>   |                                   |                                     | <b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>                                    |                                  |                    |
| <input type="checkbox"/>   | Prime                             | <input type="checkbox"/>            | Subawardee  |                                  |                    |
|  |                                   |                                     | Tier _____, if known  |                                  |                    |
| Congressional District, if known _____   |                                   |                                     | Congressional District, if known _____  |                                  |                    |
| <b>6. Federal Department/Agency:</b>   |                                   |                                     | <b>7. Federal Program Name/Description:</b>   |                                  |                    |
|  |                                   |                                     | CFDA Number, if applicable _____  |                                  |                    |
| <b>8. Federal Action Number, if known:</b>   |                                   |                                     | <b>9. Award Amount, if known:</b>   |                                  |                    |
|  |                                   |                                     |   |                                  |                    |
| <b>10. Name and Address of Lobby Entity</b><br>(If individual, last name, first name, MI)  |                                   |                                     | <b>11. Individuals Performing Services</b><br>(including address if different from No. 10)<br>(last name, first name, MI) |                                  |                    |
|  |                                   |                                     |   |                                  |                    |
| (attach Continuation Sheet(s) if necessary)  |                                   |                                     |   |                                  |                    |
| <b>12. Amount of Payment (check all that apply)</b>  |                                   |                                     | <b>14. Type of Payment (check all that apply)</b>   |                                  |                    |
| \$ _____   | <input type="checkbox"/> actual   | <input type="checkbox"/> planned    | <input type="checkbox"/>  | a. retainer                      |                    |
|  |                                   |                                     | <input type="checkbox"/>  | b. one-time fee                  |                    |
|  |                                   |                                     | <input type="checkbox"/>  | c. commission                    |                    |
| <b>13. Form of Payment (check all that apply):</b>   |                                   |                                     | <input type="checkbox"/>  | d. contingent fee                |                    |
| <input type="checkbox"/>   | a. cash                           |                                     | <input type="checkbox"/>  | e. deferred                      |                    |
| <input type="checkbox"/>   | b. in-kind; specify: nature _____ |                                     | <input type="checkbox"/>  | f. other, specify _____          |                    |
|  |                                   |                                     |   |                                  |                    |
|  |                                   |                                     |   |                                  |                    |
|  |                                   |                                     |   |                                  |                    |
|  |                                   |                                     |   |                                  |                    |
| <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 12:</b>   |                                   |                                     |   |                                  |                    |
|  |                                   |                                     |   |                                  |                    |
| (attach Continuation Sheet(s) if necessary)  |                                   |                                     |   |                                  |                    |
| <b>16. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/></b>  |                                   |                                     |   |                                  |                    |
| <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> |                                   |                                     | Signature: <u><i>Daniel A. Calvillo</i></u>   |                                  |                    |
|  |                                   |                                     | Print Name: <u>Daniel Calvillo</u>  |                                  |                    |
|  |                                   |                                     | Title: <u>Vice President/ CFO</u>   |                                  |                    |
|  |                                   |                                     | Telephone No.: <u>(909) 484-4200</u> Date: <u>6/12/24</u>   |                                  |                    |
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# **AGENDA ITEM 60**



| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |  |
|---|--|
| <b>DATE:</b>                                      | September 11, 2024   |
| <b>TO:</b>  | Riverside County Transportation Commission                   |
| <b>FROM:</b>                                      | Eric DeHate, Transit Manager                                 |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director                               |
| <b>SUBJECT:</b>                                   | Fiscal Year 2024/25 State of Good Repair Program Allocations |

**STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Approve Resolution No. 24-008, *“Resolution of the Riverside County Transportation Commission Approving the FY 2024/25 Project List for the California State of Good Repair Program;”*
- 2) Approve an allocation of \$5,007,660 related to Fiscal Year (FY) 2024/25 State of Good Repair (SGR) program funds to eligible Riverside County transit operators;
- 3) Approve an increase of \$296,643 in the FY 2024/25 budget for SGR revenues to reflect updated SCO estimates;
- 4) Authorize the Executive Director, or designee, to review, approve and submit projects to Caltrans which are consistent with SGR program guidelines and to execute and submit required documents for the SGR program, including the Authorized Agent Form; and
- 5) Authorize the Executive Director, or designee, to approve administrative amendments to the FY 2024/25 Short Range Transit Plans (SRTPs) for incorporation of the SGR funds, as necessary.

**BACKGROUND INFORMATION:**

The SGR program was established through Senate Bill (SB) 1 in April 2017 and is funded from a portion of the new Transportation Improvement Fee on vehicle registrations. SGR provides approximately \$105 million annually to transit operators in California for eligible transit maintenance, rehabilitation, and capital projects. Funds are apportioned similar to the State Transit Assistance program formula, utilizing two categories for funding: population and transit operator revenues. Apportionments by population are discretionary and fall under Public Utilities Code (PUC) 99313, and apportionments based on transit operator revenues are non-discretionary and fall under PUC 99314. Apportionments for both PUC 99313 and 99314 are determined by the State Controller’s Office (SCO).

The total estimated amount of SGR funds available to Riverside County for FY 2024/25 is \$5,007,660. Of this amount, \$4,305,510 is apportioned by population under PUC 99313 to the

Commission for sub-allocation. PUC 99314 provides \$702,150 directly to the transit operators as determined by the SCO.

As the regional transportation planning agency for Riverside County, the Commission has the following responsibilities:

- Receive and allocate SGR funds to transit operators based on local needs (PUC 99313) and based on formula amounts published by the SCO (PUC 99314);
- Via board resolution, approve the annual list of SGR projects submitted by the public transit operators and ensure funds are expended on SGR-eligible activities;
- Complete an updated authorized agent form; and
- Comply with all relevant federal and state laws, regulations, and policies for funding.

In order to receive funding for FY 2024/25, by September 1, the Commission is required to submit to Caltrans a resolution, which confirms the Commission is an eligible project sponsor and may receive, distribute, concur, and approve the list of projects, which are to be funded under the SGR program. Revised SGR funding amounts were released on August 1, 2024. Due to the board meeting schedule, Caltrans approved the Commission's request to submit an approved resolution and project list by September 30. To meet this requirement, staff recommends approval of Resolution No. 23-008 (Attachment 1), *"Resolution of the Riverside County Transportation Commission Approving the FY 2024/25 Project List for the California State of Good Repair Program."*

Staff also recommends approving an allocation of \$5,007,660 of FY 2024/25 SGR funds to eligible transit operators and their proposed projects (Attachment 2). Staff has reviewed the PUC 99313 distribution based on transit operator's needs. Staff expects that transit operators will program these funds in their FY 2025/26 SRTP, but they may request an amendment to the current SRTP if needed.

It is important to note that the funding allocation is an estimate provided by the SCO. Actual funds received are based on the Transportation Improvement Fee collected on vehicle registrations. Most funding sources the Commission oversees have a fund balance, which provides stability in changes to economic conditions and allows projects and programs to move forward even during economic uncertainty. Caltrans requires all SGR funds to be programmed and operators are encouraged to use these funds as expeditiously as possible. While Caltrans prefers this type of programming, it can leave little to no fund balance, which can affect project estimates.

Staff included the January 2024 SCO estimates for SGR funding allocations concurrently with the annual SRTP allocation process approved by the Commission in June. Staff did not include the resolution during that process anticipating a revised estimate in August from the SCO and subsequent board authorization. The August 2024 estimate provided by the SCO, shows an increase of 6.2 percent or \$296,643 above the January 2024 estimate that was included in the FY 2024/25 budget. As such, staff recommends a budget increase to include these revenues. Any

decreases in funding allocations will be within the approved amount the Commission authorizes and can be amended administratively. Any increases in funding allocations to the transit operators beyond this amount will be brought back to the Commission for approval during the mid-year staff report.

**FISCAL IMPACT:**

Funds are distributed to the Commission quarterly from the SCO with the final payment expected in September 2025. A total of \$4,711,000 SGR funds were already included in the Commission’s FY 2024/25 budget. The additional \$296,643 of SGR funds from the revised August estimate will be added to the FY 2024/25 budget.

| Financial Information       |  |       |                    |         |            |
|-----------------------------|--|-------|--------------------|---------|------------|
| In Fiscal Year Budget:      | No   | Year: | FY 2024/25         | Amount: | \$296,643  |
| Source of Funds:            | SB1 State of Good Repair   |       | Budget Adjustment: | Yes     |            |
| GL/Project Accounting No.:  | 00222X 401 4230X 0000 242 62 4230X (SGR revenues by various geographic area/project numbers) |       |                    |         |            |
| Fiscal Procedures Approved: |            |       |                    | Date:   | 08/16/2024 |

Attachments:

- 1) Resolution No. 24-008
- 2) SGR FY 2024/25 Allocations by Operator



**RESOLUTION NO. 24-008**  
**RESOLUTION OF THE**  
**RIVERSIDE COUNTY TRANSPORTATION COMMISSION**  
**APPROVING THE FY 2024/25 PROJECT LIST**  
**FOR THE CALIFORNIA STATE OF GOOD REPAIR PROGRAM**

**WHEREAS**, Senate Bill 1 (SB 1), the Road Repair and Accountability Act 2017, established the State of Good Repair (SGR) program to fund eligible transit maintenance, rehabilitation and capital project activities that maintain the public transit system in a state of good repair; and

**WHEREAS**, the Riverside County Transportation Commission is an eligible project sponsor and may receive and distribute State Transit Assistance – SGR funds to eligible project sponsors (local agencies) for eligible transit capital projects;

**WHEREAS**, the Riverside County Transportation Commission distributes SGR funds to eligible project sponsors (local agencies) under its regional jurisdiction; and

**WHEREAS**, the Riverside County Transportation Commission concurs with and approves the attached project list for the SGR Program funds; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Riverside County Transportation Commission hereby approves the SB 1 SGR Project List for FY 2024/25; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Commissioners of the Riverside County Transportation Commission that the fund recipient agrees to comply with all conditions and requirements set forth in the Certification and Assurances document and applicable statutes, regulations and guidelines for all SGR funded transit capital projects.

**NOW, THEREFORE, BE IT RESOLVED**, that the Executive Director or designee is hereby authorized to submit a request for Scheduled Allocation of the SB 1 SGR funds and to execute the related grant applications, forms and agreements, including the Authorized Agent Form.

APPROVED AND ADOPTED this 11<sup>th</sup> day of September, 2024.

\_\_\_\_\_  
Lloyd White, Chair  
Riverside County Transportation Commission

ATTEST:

\_\_\_\_\_  
Lisa Mobley, Clerk of the Board  
Riverside County Transportation Commission







**FY 2024/25 State of Good Repair (SGR) Funding Allocation**  
 State Controller's Office Revised Estimate as of August 1, 2024

| Western Riverside |      | Coachella Valley |      | Palo Verde Valley | Total |
|-------------------|------|------------------|------|-------------------|-------|
| Bus               | Rail | Bus              | Rail |                   |       |

|                         |           |         |           |  |        |                  |
|-------------------------|-----------|---------|-----------|--|--------|------------------|
| PUC 99313 Discretionary | 2,392,033 | 778,769 | 1,060,676 |  | 74,032 | <b>4,305,510</b> |
|-------------------------|-----------|---------|-----------|--|--------|------------------|

|                          |           |
|--------------------------|-----------|
| City of Banning          | 67,477    |
| City of Beaumont         | 57,643    |
| City of Corona           | 94,835    |
| City of Riverside        | 54,023    |
| Riverside Transit Agency | 2,118,055 |

|                             |         |         |         |   |       |                |
|-----------------------------|---------|---------|---------|---|-------|----------------|
| PUC 99314 Non-Discretionary | 239,467 | 321,231 | 139,324 | 0 | 2,128 | <b>702,150</b> |
|-----------------------------|---------|---------|---------|---|-------|----------------|

|                          |         |
|--------------------------|---------|
| City of Banning          | 2,523   |
| City of Beaumont         | 3,857   |
| City of Corona           | 5,165   |
| City of Riverside        | 5,977   |
| Riverside Transit Agency | 221,945 |

|                                   |                  |                  |                  |          |               |                  |
|-----------------------------------|------------------|------------------|------------------|----------|---------------|------------------|
| <b>Total FY 24/25 SGR Funding</b> | <b>2,631,500</b> | <b>1,100,000</b> | <b>1,200,000</b> | <b>0</b> | <b>76,160</b> | <b>5,007,660</b> |
|-----------------------------------|------------------|------------------|------------------|----------|---------------|------------------|

Rev. 8/8/2024

| FY 24/25 SGR PROPOSED PROJECT LISTING |                  |                |                      |                |   |
|---------------------------------------|------------------|----------------|----------------------|----------------|---|
| Agency                                | PUC 99313        | PUC 99314      | Total SGR Allocation | Project Number | Proposed Project Description  |
| City of Banning                       | 67,477           | 2,523          | <b>\$70,000</b>      | 26-TBD         | Capitalized Preventative Maintenance  |
| City of Beaumont                      | 57,643           | 3,857          | <b>\$61,500</b>      | 26-TBD         | Capitalized Preventative Maintenance  |
| City of Corona                        | 94,835           | 5,165          | <b>\$100,000</b>     | 26-TBD         | Bus Stop Improvements   |
| City of Riverside                     | 54,023           | 5,977          | <b>\$60,000</b>      | 26-TBD         | Capitalized Preventative Maintenance  |
| Palo Verde Valley Transit Agency      | 74,032           | 2,128          | <b>\$76,160</b>      | 26-TBD         | Maintenance Infrastructure: SGR Equipment and Facility Upgrades.                                  |
| RCTC                                  | 778,769          | 321,231        | <b>\$1,100,000</b>   | 26-TBD         | Rail Stations - Capital Rehabilitation  |
| Riverside Transit Agency              | 2,118,055        | 221,945        | <b>\$2,340,000</b>   | 26-TBD         | Facility, Maintenance, Safety and Revenue/Support Vehicle Replacements, Enhancements and Upgrades |
| SunLine Transit Agency                | 1,060,676        | 139,324        | <b>\$1,200,000</b>   | 26-TBD         | Replacement Bus Wash  |
| <b>Grand Totals</b>                   | <b>4,305,510</b> | <b>702,150</b> | <b>\$5,007,660</b>   |                |   |



# **AGENDA ITEM 7**



| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |  |
|---|--|
| <b>DATE:</b>                                      | September 11, 2024   |
| <b>TO:</b>  | Riverside County Transportation Commission   |
| <b>FROM:</b>                                      | Western Riverside County Programs and Projects Committee<br>David Thomas, Toll Project Delivery Director |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director   |
| <b>SUBJECT:</b>                                   | Project Study Report-Project Development Support for the North Main Corona Transit Connector Project     |

**WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE AND STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Approve Agreement No. 25-31-009-00 with California Department of Transportation (Caltrans) for quality management services in support of a Project Study Report-Project Development Support (PSR-PDS) for the North Main Corona Transit Connector Project (Project) in the amount not to exceed \$300,000;
- 2) Award Agreement No. 25-31-010-00 with Jacobs Engineering Group Inc. (Jacobs) for the completion of the PSR-PDS for the Project for a one-year term in the amount of \$726,343 plus a contingency amount of \$73,657, for a total amount not to exceed \$800,000;
- 3) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements on behalf of the Commission;
- 4) Authorize the Executive Director or designee to approve contingency work up to the total amount not to exceed as required for the Project; and
- 5) Approve a Fiscal Year (FY) 2024/25 budget adjustment of \$1,100,000 of Local Transportation Funds (LTF) for both revenue and expenses related to the Project.

**BACKGROUND INFORMATION:**

The Project was initiated to provide transit connectivity and improve ridership between the State Route 91 Express Lanes and the transit facilities located in the city of Corona at the North Main Metrolink Station, the Corona Transit Center, and the Caltrans Park-N-Ride facility (Figure 1 Vicinity Map).

This Project benefits two Riverside Transit Agency (RTA) express CommuterLink routes, 200 and 206. CommuterLink Route 200 currently operates every 60 minutes on weekdays, with reduced service on weekends, from San Bernadino/Riverside to Orange County. While the transit facilities at North Main St. serve as both a regional and local transit hub for the city of Corona, Route 200 is not able to access them, as it currently operates in the SR-91 Express Lanes, which do not exit to North Main Street. CommuterLink Route 206 operates during peak hours only from

Temecula/Murrieta/Lake Elsinore to Corona via Interstate 15. On SR-91, the route operates in the general-purpose lanes and terminates at the Corona Transit Station (Figure 2 Project Study Area).

The Project would provide transit connection between the Route 200 and the transit facilities at North Main in the city of Corona, specifically the North Main Metrolink Station, the RTA Corona Transit Station, and the Caltrans Park-N-Ride facility.



Figure 1: North Main Corona Transit Connector Project Vicinity Map



Figure 2: Project Study Area

This Project was included in the 2024 Traffic Relief Plan.

The objectives of this Project are to:

- Improve accessibility to existing and future transit express services operating in the SR-91 Express Lanes that provides convenient, reliable, and high-speed transit connections to regional activity centers in Riverside, San Bernardino, and Orange counties.
- Facilitate transfer connections between SR-91 transit express services and regional rail and local bus services at the Corona-North Main Metrolink Station and Corona Transit Station that provide transit connections to regional activity centers in Riverside, San Bernardino, Orange, and Los Angeles counties.
- Minimize station dwell times and maintain high-speed operations along the SR-91 Express Lanes service high-speed operations for freeway express services.
- Create a comfortable and convenient passenger environment that minimizes walking distances.
- Enhance transit connectivity to accommodate planned growth and provide consistency with regional and state goals as identified in the Southern California Association of Governments SoCal Connect Regional Transportation Plan/Sustainable Communities Strategy and the Climate Action Plan for Transportation Investment.
- Consider alternatives with high-occupancy vehicle connections from the city of Corona to the SR-91 express lanes.



**DISCUSSION:**

Since the project's inception, staff has been collaborating closely with stakeholders from Metrolink, RTA, Caltrans, and the city of Corona. Jacobs was selected through a competitive task order under the Commission's on-call multimodal transit/rail bench of consultants to prepare the feasibility study. This on-call consultant contracts were awarded for a five-year term at the October 2022 Commission meeting. As part of the feasibility study, Jacobs evaluated issues and opportunities to better understand the existing conditions, needs, and challenges of the project and discussed the project with stakeholders and RCTC. Several alternative concepts were developed, and stakeholder consensus was received to pursue project initiation for 91 Express Lane drop ramps to W. Grand Boulevard (Figure 3 Preferred Alternative).

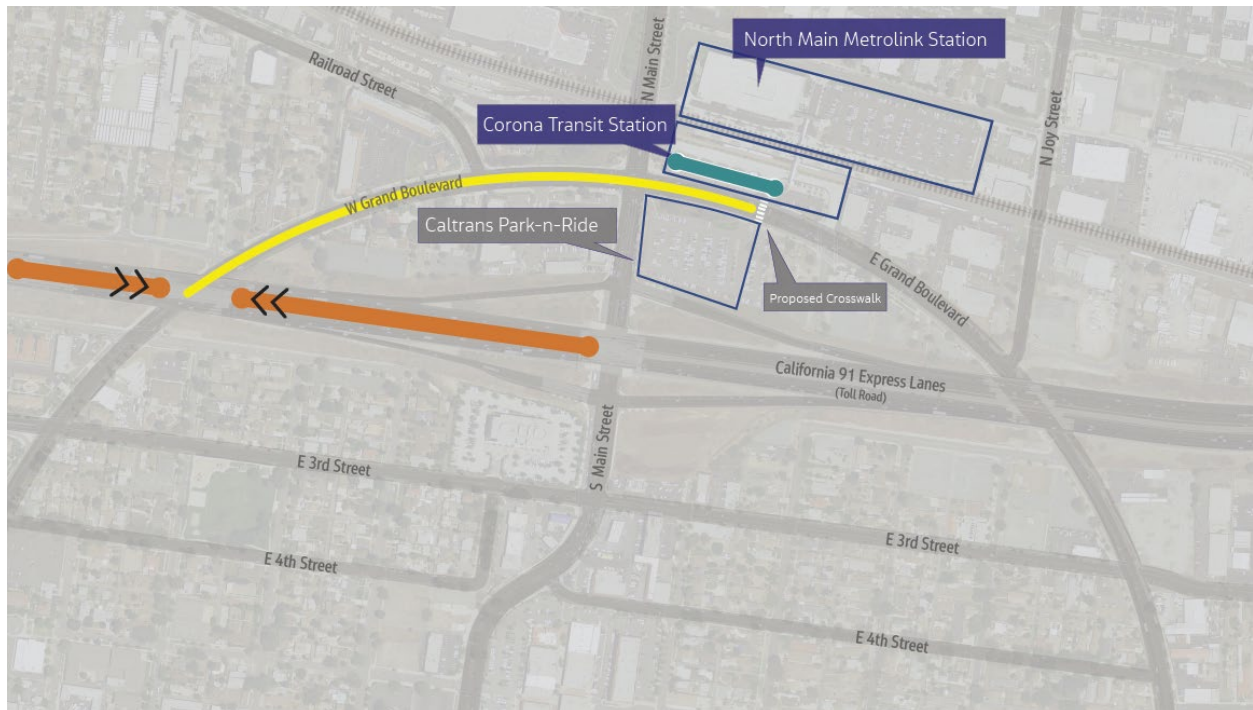


Figure 3: Preferred Alternative – 91 Express Lanes Drop Ramps

The next phase involves preparing a PSR-PDS. Staff proposes to procure the PSR-PDS services directly from Jacobs on a sole source basis, based on its existing project experience and its ability to expedite the delivery. In the PSR-PDS, Jacobs will obtain conceptual approval for the overall project alternatives and identify the necessary studies and approvals needed to deliver the project. Additionally, Jacobs will also identify eligible grant opportunities, assess project competitiveness for up to three grant opportunities, and support RCTC in the development of up to two planning grant applications. Staff has reviewed and negotiated the scope and estimated cost including the appropriate level of labor hours to complete the delivery of the PSR-PDS. The proposed cost is \$726,343 including a contingency of about 10 percent or \$73,657, for a total amount not to exceed \$800,000. Staff anticipates the PSR-PDS will be completed in approximately nine months following notice to proceed.




To proceed with the PSR-PDS phase of the Project, the Commission must enter into a cooperative agreement with Caltrans, the owner and operator of the State Highway System. Execution of the agreement provides Caltrans with a funding source for quality management efforts for review and approval of the PSR-PDS document. The Commission is responsible to fund the cost of services that Caltrans provides, estimated at \$300,000. The Caltrans engineering and environmental support costs for review of the PSR-PDS only include direct costs. Indirect or overhead costs will not be billed for the development of the PSR-PDS document.

**RECOMMENDATION:**

Staff recommends award of Agreement No. 25-31-010-00 to Jacobs for the PSR-PDS for the North Main Corona Transit Connector Project in the amount of \$726,343 plus a contingency amount of \$73,657, for a total amount not to exceed \$800,000 (Attachment 1). Staff also recommends approval of Agreement No. 25-31-009-00, a cooperative agreement between the Commission and the Caltrans for the North Main Corona Transit Connector Project, in an amount not to exceed \$300,000 (Attachment 2). Lastly, staff recommends authorization for the Chair or Executive Director, pursuant to legal counsel review, to 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.

**FISCAL IMPACT:**

A budget adjustment is needed for this item in FY 2024/25. Funding from LTF-Planning (fund balance) will be used to cover the proposed contract expenses; the agreements with both Caltrans and Jacobs Engineering Group totaling \$1.1 million.

| Financial Information       |  |       |              |                    |             |
|-----------------------------|--|-------|--------------|--------------------|-------------|
| In Fiscal Year Budget:      | No   | Year: | FY 2024/2025 | Amount:            | \$1,100,000 |
| Source of Funds:            | LTF Planning   |       |              | Budget Adjustment: | Yes         |
| GL/Project Accounting No.:  | 002332 00000 0000 106 67 86205   |       |              |                    |             |
| Fiscal Procedures Approved: |  |       |              | Date:              | 08/15/2024  |

Attachments:

- 1) Draft Agreement No. 25-31-010-00 with Jacobs
- 2) Draft Agreement No. 25-31-009-00 with Caltrans

*Approved by the Western Riverside County Programs and Projects Committee on  
August 26, 2024*

In Favor: 9 Abstain: 0 No: 0

**Agreement No. 25-31-010-00**

**PROFESSIONAL SERVICES AGREEMENT  
RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
JACOBS ENGINEERING GROUP, INC.  
FOR  
PROJECT STUDY REPORT-PROJECT DEVELOPMENT SUPPORT SERVICES  
FOR THE  
NORTH MAIN CORONA TRANSIT CONNECTOR PROJECT**

**Parties and Date.**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2024, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and JACOBS ENGINEERING GROUP, 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. 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 PROJECT STUDY REPORT-PROJECT DEVELOPMENT SUPPORT services to public clients, is licensed in the State of California (if necessary), and is familiar with the plans of the Commission.

E. The Commission desires to engage Consultant to render such services for the NORTH MAIN CORONA TRANSIT CONNECTOR PROJECT ("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 PROJECT STUDY REPORT-PROJECT DEVELOPMENT SUPPORT 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. Term.

3.1 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 September 30, 2025, unless extended by contract amendment.

3.2 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.

3.3 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.

4. 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.

5. Consultant's Representative. Consultant hereby designates **[\_INSERT NAME OR TITLE\_]** 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.

6. Substitution of Key Personnel. Consultant has represented to the Commission that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval by the Commission. In the event that the Commission and Consultant cannot agree as to the substitution of the key personnel, the Commission shall be entitled to terminate this Agreement for cause, pursuant to the provisions herein. The key personnel for performance of this Agreement are as follows: **[\_INSERT NAMES OF KEY PERSONNEL\_]** .

7. Standard of Care; Licenses; Evaluation.

7.1 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.

7.2 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.

8. 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.

9. 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.

9.1 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.

9.2 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.

9.3 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.

## 10. Delay in Performance.

10.1 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.

10.2 Written Notice. If Consultant believes it is entitled to an extension of time due to conditions set forth in subsection 10.1, 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.

10.3 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.

11. 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.

12. 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.

13. 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 to inspect or review Consultant's work in progress at any reasonable time.

14. Claims Filed by Contractor.

14.1 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.

14.2 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.

14.3 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.

14.4 Nothing contained in this Section shall be construed to in any way limit Consultant's indemnification obligations contained in Section 26. In the case of any conflict between this Section and Section 26, Section 26 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 26 of this Agreement.

15. 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.

16. 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.

17. Fees and Payment.

17.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The Total Compensation shall not exceed **[\_\_INSERT WRITTEN DOLLAR AMOUNT\_\_]** (**\$[\_\_INSERT NUMERICAL DOLLAR AMOUNT\_\_]**) without written approval of Commission's Representative. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

17.2 Payment of Compensation. Consultant shall submit a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the Statement. Charges specific to each Milestone listed in the Schedule of Services shall be listed separately on an attachment to each statement. Each statement shall be accompanied by a monthly progress report and spreadsheets showing hours expended for each task for each month and the total Project to date. Each statement shall include a cover sheet bearing a certification as to

the accuracy of the statement signed by the Consultant's Project Manager or other authorized officer.

17.3 Extra Work. At any time during the term of this Agreement, Commission may request Consultant to perform Extra Work. As used herein, "Extra Work" means any work which is determined by the Commission to be necessary for proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from Commission's Representative. In the event an Extra Work Order is not issued and signed by Commission's Representative, Consultant shall not provide such Extra Work.

17.4 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by the Commission's Representative.

## 18. Disputes.

18.1 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.

18.2 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.

18.3 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.

## 19. Termination; Suspension.

19.1 Commission reserves the right to terminate this Agreement for any or no reason upon written notice to Consultant setting forth the effective date of termination, with the reasons for termination stated in the notice.

19.2 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.

19.3 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.

19.4 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.

19.5 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.

19.6 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.

19.7 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.

19.8 Consultant may not terminate this Agreement except for cause.

19.9 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.

20. 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 and the Commission shall have access to any books, records, and documents of Consultant that are pertinent to this Agreement for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

21. Audit Review Procedures.

21.1 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.

21.2 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.

21.3 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.

22. Subcontracting.

22.1 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.

22.2 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.

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

22.4 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.

22.5 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).

22.6 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.

### 23. Equipment Purchase

23.1 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.

23.2 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.

23.3 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.

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

24. Labor Code Requirements.

24.1 Prevailing Wages.

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

(b) Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Section.

(c) 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>.

(d) 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.

24.2 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.

24.3 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.

24.4 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

25. Ownership of Materials/Confidentiality.

25.1 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.

25.2 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.

25.3 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.

25.4 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.

26. 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.

## 27. Insurance.

27.1 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.

27.2 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.

27.3 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.

27.4 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 and its directors, officials, officers, employees and agents as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant.

27.5 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 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 and its directors, officials, officers, employees and agents shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Commission and its directors, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Commission and its directors, officials, officers, employees and agents shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(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 and its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

(iii) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of 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:

27.6 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.

27.7 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.

27.8 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.

27.9 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.

27.10 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.

28. 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 26 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.

29. Prohibited Interests.

29.1 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.

29.2 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 neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement. 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.

29.3 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.

29.4 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.

29.5 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.



29.6 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.

30. 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.

31. Right to Employ Other Consultants. Commission reserves the right to employ other consultants in connection with the Project.

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

33. Disputes; Attorneys' Fees.

33.1 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.

33.2. 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.

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

35. 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.

36. 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:

COMMISSION:

**[INSERT]**

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.

37. 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.

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

39. 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.

40. 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.

41. 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.

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

43. 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.

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

45. 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.

46. 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.

47. 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.

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

49. 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.

50. 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**

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

|  |   |
|--|---|
| <p><b>RIVERSIDE COUNTY<br/>TRANSPORTATION COMMISSION</b></p> <p>By: _____<br/>Aaron Hake<br/>Executive Director</p> <p><i>Approved as to Form:</i></p> <p>By: _____<br/>Best, Best &amp; Krieger LLP<br/>General Counsel</p> | <p><b>CONSULTANT</b></p> <p>By: _____<br/>Signature</p> <p>_____ Name</p> <p>_____ Title</p> <p><b>ATTEST:</b></p> <p>By: _____</p> <p>Its: _____</p> |
|--|---|

\* 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 "B"**  
**SCHEDULE OF SERVICES**

**[attached behind this page]**

**DRAFT**

**EXHIBIT "C"**  
**COMPENSATION PROVISIONS**

**[attached behind this page]**

**DRAFT**





## **COOPERATIVE AGREEMENT COVER SHEET**

### **Work Description**

TO DEVELOP A PROJECT STUDY REPORT-PROJECT DEVELOPMENT SUPPORT (PSR-PDS) DOCUMENT AND CONSTRUCT THE TRANSIT CONNECTIVITY AND ACCESS FROM SR-91 AND I-15 EXPRESS LANES TO THE REGIONAL TRANSIT FACILITIES LOCATED WEST OF I-15 IN THE CITY OF CORONA

### **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**

Bruce Ko, Project Manager  
464 West 4th Street  
San Bernardino, CA 92401  
Office Phone: (909) 383-7958  
Email: bruce.ko@dot.ca.gov

#### **RIVERSIDE COUNTY TRANSPORTATION COMMISSION**

David Thomas, Project Delivery Director  
4080 Lemon Street, 3rd Floor  
Riverside, CA 92502  
Office Phone: (951) 787-7141  
Email: dthomas@rctc.org

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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 and California Government Code, Section 65086.5.
2. For the purpose of this AGREEMENT, *to develop a project study report-project development support (PSR-PDS) document and construct the transit connectivity and access from SR-91 and I-15 express lanes to the regional transit facilities located west of I-15 in the city of Corona*, will be referred to hereinafter as PROJECT. RCTC desires that a Project Initiation Document (PID) be developed for the PROJECT. The Project Initiation Document will be a Project Study Report-Project Development Support (PSR-PDS).
3. All obligations and responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENT will be referred to hereinafter as WORK:
  - PROJECT INITIATION DOCUMENT (PID)

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.

AGREEMENT will terminate 180 days after PID is signed by PARTIES or as mutually agreed by PARTIES in writing. However, all indemnification articles will remain in effect until terminated or modified in writing by mutual agreement.

5. [The following documents are attached to, and made an express part of this AGREEMENT:](#)
  - [Scope Summary](#)
6. No PROJECT deliverables have been completed prior to this AGREEMENT.
7. In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.
8. PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT.

## **RESPONSIBILITIES**

### **Sponsorship**

9. 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.

10. RCTC is the SPONSOR for the WORK in this AGREEMENT.

### **Implementing Agency**

11. 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 Project Initiation Document (PID) IMPLEMENTING AGENCY.

The PID identifies the PROJECT need and purpose, stakeholder input, project alternatives, anticipated right-of-way requirements, preliminary environmental analysis, initial cost estimates, and potential funding sources.

12. 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.

13. 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**

14. RCTC is the only PARTY committing funds in this AGREEMENT and will fund the cost of the WORK in accordance with this AGREEMENT.

If, in the future, CALTRANS is allocated state funds and Personnel Years (PYs) for PID review or development of this PROJECT, PARTIES will agree to amend this AGREEMENT to change the reimbursement arrangement for PID review.

15. PARTIES will not be reimbursed for costs beyond the funding commitments in this AGREEMENT.
16. Unless otherwise documented in the Reimbursement 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 Reimbursement 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 Reimbursement 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.

**Project Initiation Document (PID)**

- 23. As the PID IMPLEMENTING AGENCY, RCTC is responsible for all PID WORK except those activities and responsibilities that are assigned to another PARTY in this AGREEMENT and those activities that may be specifically excluded.
- 24. Should RCTC request CALTRANS to perform any portion of PID preparation work, except as otherwise set forth in this AGREEMENT, RCTC agrees to reimburse CALTRANS for such work and PARTIES will amend this AGREEMENT.
- 25. CALTRANS will be responsible for completing the following PID activities:

| CALTRANS Work Breakdown Structure Identifier (If Applicable)                   | AGREEMENT Funded Cost |
|--|-----------------------|
| <del>100.05.10.xx Quality Management See Scope Summary</del>                   | YES                   |
| <del>150.05.05.xx Review of Existing Reports, Data, Studies, and Mapping</del> | YES                   |
| <del>150.25.20 PID Circulation, Review, and Approval</del>                     | YES                   |

- 26. CALTRANS will provide relevant existing proprietary information and maps related to:
  - Geologic and Geotechnical information
  - Utility information
  - Environmental constraints
  - Traffic modeling/forecasts
  - Topographic and Boundary surveys
  - As-built centerline and existing right-of-way

Due to the potential for data loss or errors, CALTRANS will not convert the format of existing proprietary information or maps.

- 27. When required, CALTRANS will perform pre-consultation with appropriate resource agencies in order to reach consensus on need and purpose, avoidance alternatives, and feasible alternatives.
- 28. CALTRANS will actively participate in the Project Development Team meetings.
- 29. The PID will be signed on behalf of RCTC by a Civil Engineer registered in the State of California.
- 30. CALTRANS will review and approve the Project Initiation Document (PID) as required by California Government Code, Section 65086.5.

CALTRANS will complete a review of the draft PID and provide its comments to RCTC within 60 calendar days from the date CALTRANS received the draft PID from RCTC. RCTC will address the comments provided by CALTRANS. If any interim reviews are requested of CALTRANS by RCTC, CALTRANS will complete those reviews within 30 calendar days from the date CALTRANS received the draft PID from RCTC.

After RCTC revises the PID to address all of CALTRANS' comments and submits the revised draft PID and all related attachments and appendices, CALTRANS will complete its review and final determination of the revised draft PID within 30 calendar days from the date CALTRANS received the revised draft PID from RCTC. Should CALTRANS require supporting data necessary to defend facts or claims cited in the revised draft PID, RCTC will provide all available supporting data in a reasonable time so that CALTRANS may conclude its review. The 30 day CALTRANS review period will be stalled during that time and will continue to run after RCTC provides the required data.

No liability will be assigned to CALTRANS, its officers and employees by RCTC under the terms of this AGREEMENT or by third parties by reason of CALTRANS' review and approval of the PID.

RCTC shall provide CALTRANS with plans prepared by RCTC or RCTC's consultant on CD using Micro\_Station.dgn: files and RCTC shall provide CALTRANS with all documents pertaining to PROJECT in the appropriate electronic format (MSWORD, Excel, and pdf). One copy should be provided to CALTRANS upon completion of the PROJECT's Project Initiation Document. CALTRANS reserves the right to modify the electronic files.

## **Additional Provisions**

### **Standards**

31. 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 Users Manual
  - CALTRANS policies and directives
  - Plans Preparation Manual
  - Project Development Procedures Manual (PDPM)
  - Workplan Standards Guide
  - Construction Manual Supplement for Local Agency Resident Engineers
  - Local Agency Structure Representative Guidelines

### **Noncompliant Work**

32. 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**

33. Each PARTY will ensure that personnel participating in WORK are appropriately qualified or licensed to perform the tasks assigned to them.



Consultant Selection

34. RCTC will invite CALTRANS to participate in the selection of any consultants that participate in the WORK.

Encroachment Permits

35. 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.
36. 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

37. 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

38. 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.

39. 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

40. If any hazardous materials, pursuant to Health and Safety Code 25260(d), are found within the PROJECT limits, the discovering PARTY will notify all other PARTIES within twenty-four (24) hours of discovery.

41. PARTIES agree to consider alternatives to PROJECT scope and/or alignment, to the extent practicable, in an effort to avoid any known hazardous materials within the proposed PROJECT limits.
42. If hazardous materials are discovered within PROJECT limits, but outside of State Highway System right-of-way, it is the responsibility of RCTC in concert with the local agency having land use jurisdiction over the property, and the property owner, to remedy before CALTRANS will acquire or accept title to such property.

Claims

43. 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.
44. 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.
45. 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

46. 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.
47. 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.

48. 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.
49. 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

50. If WORK stops for any reason, IMPLEMENTING AGENCY will place the PROJECT right-of-way in a safe and operable condition acceptable to CALTRANS.

Penalties, Judgments and Settlements

51. The cost of awards, judgments, fines, interest, penalties, attorney's fees, and/or settlements generated by the WORK are considered WORK costs.
52. 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.

**GENERAL CONDITIONS**

53. All portions of this AGREEMENT, including the RECITALS section, are enforceable.

**Venue**

54. 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**

55. 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**

56. 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.
57. 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**

58. 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.
59. 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**

60. 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.

61. 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**

62. 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**

63. 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.

64. PARTIES maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.

### **Prevailing Wage**

65. 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.

**REIMBURSEMENT SUMMARY**

| <b>FUNDING TABLE</b>               |              |                  |                    |               |
|------------------------------------|--------------|------------------|--------------------|---------------|
| <b><u>IMPLEMENTING AGENCY:</u></b> |              |                  | <b><u>RCTC</u></b> |               |
| <b>Source</b>                      | <b>Party</b> | <b>Fund Type</b> | <b>PID</b>         | <b>Totals</b> |
| LOCAL                              | RCTC         | Local            | 300,000            | 300,000       |
|                                    |              |                  |                    |               |
| Totals                             |              |                  | 300,000            | 300,000       |

**DRAFT**

| <b>SPENDING TABLE</b> |                 |                    |               |
|-----------------------|-----------------|--------------------|---------------|
| <b>Fund Type</b>      | <b>PID</b>      |                    | <b>Totals</b> |
|                       | <b>CALTRANS</b> | <b><u>RCTC</u></b> |               |
| Local                 | 300,000         |                    | 300,000       |
| Totals                | 300,000         |                    | 300,000       |

**DRAFT**

### **Funding**

66. Per the State Budget Act of 2012, Chapter 603, amending item 2660-001-0042 of Section 2.00, the cost of any engineering support performed by CALTRANS towards any local government agency-sponsored PID project will only include direct costs. Indirect or overhead costs will not be applied during the development of the PID document.

### **Invoicing and Payment**

67. 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). When paying with EFT, RCTC will pay invoices within five (5) calendar days of receipt of invoice.
68. If RCTC has received EFT certification from CALTRANS then RCTC will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
69. 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.

### **Project Initiation Document (PID)**

70. CALTRANS will invoice RCTC for a \$45,000 initial deposit after execution of this AGREEMENT and forty-five (45) working days prior to the commencement of PID expenditures. This deposit represents two (2) months' estimated costs.

Thereafter, 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**

\_\_\_\_\_  
Catalino Pining III  
District Director

\_\_\_\_\_  
Aaron Hake  
Executive Director

**Verification of Funds and Authority:**

\_\_\_\_\_  
Corina Harriman  
District Budget Manager

**Certified as to financial terms and policies:**

---

Darwin Salmos  
HQ Accounting Supervisor

---

HQ Legal Representative  
HQ Legal Rep Title

DRAFT

| <b>SCOPE SUMMARY</b>  |                 |             |            |
|---|-----------------|-------------|------------|
| <b>WORK ELEMENT</b>   | <b>CALTRANS</b> | <b>RCTC</b> | <b>N/A</b> |
| 0.100.05.05.xx - Quality Management Plan                                      |                 | x           |            |
| 0.100.05.05.xx - Risk Management Plan   |                 | x           |            |
| 0.100.05.05.xx - Project Communication Plan                                   |                 | x           |            |
| 0.100.05.10.xx - Quality Management   | x               |             |            |
| 0.100.05.10.xx - Cooperative Agreement for PA&ED Phase                        | x               | x           |            |
| 0.100.05.10.xx - Independent Quality Assurance (IQA)                          | x               |             |            |
| 0.100.05.10.xx - Project Development Team Meetings                            | x               | x           |            |
| 1.150.05.05 - Review of Existing Reports, Data, Studies, and Mapping          |                 | x           |            |
| 1.150.05.05.xx - Review of Existing Reports, Data, Studies, and Mapping       | x               |             |            |
| 1.150.05.10 - Geological Hazards Review                                       |                 | x           |            |
| 1.150.05.10.xx - Provision of Existing Geological Information                 | x               |             |            |
| 1.150.05.15 - Utility Search  |                 | x           |            |
| 1.150.05.15.xx - Provision of Existing Utility Information                    | x               |             |            |
| 1.150.05.20 - Environmental Constraints Identification                        |                 | x           |            |
| 1.150.05.20.xx - Provision of Environmental Constraints Information           | x               |             |            |
| 1.150.05.25 - Traffic Forecasts/Modeling                                      |                 | x           |            |
| 1.150.05.25.xx - Provision of Existing Traffic Forecasts/Modeling Information | x               |             |            |
| 1.150.05.30 - Surveys and Maps for PID  |                 | x           |            |
| 1.150.05.30.xx - Provision of Existing Surveys and Mapping                    | x               |             |            |
| 1.150.05.35 - Transportation Problem Definition and Site Assessment           |                 | x           |            |
| 1.150.05.45 - As-Built Centerline and Existing Right of Way                   |                 | x           |            |

|   |   |   |  |
|---|---|---|--|
| 1.150.05.xx - Provision of Existing District Geotechnical Information         | x |   |  |
| 1.150.05.50 - Transportation Climate Risk/Adaptation Evaluation               |   | x |  |
| 1.150.10 – Initial Alternatives Development                                   |   | x |  |
| 1.150.10.05 - Public/Local Agency Input                                       |   | x |  |
| 1.150.10.15 – Concept Alternatives Development                                |   | x |  |
| 1.150.15 – Alternatives Analysis  |   | x |  |
| 1.150.15.05 - Right of Way Data Sheets  |   | x |  |
| 1.150.15.10 - Utility Relocation Requirements Assessment                      |   | x |  |
| 1.150.15.15 - Railroad Involvement Determination                              |   | x |  |
| 1.150.15.25 - Preliminary Materials Report                                    |   | x |  |
| 1.150.15.30 – Structures Advance Planning Study (APS)                         |   | x |  |
| 1.150.15.35 - Multimodal/Complete Streets Review                              |   | x |  |
| 1.150.15.40 - Hydraulic Review  |   | x |  |
| 1.150.15.50 - Traffic Studies   |   | x |  |
| 1.150.15.55 - Construction Estimates  |   | x |  |
| 1.150.15.60 – Preliminary Transportation Management Plan                      |   | x |  |
| 1.150.20 – Preliminary Environmental Analysis Report (PEAR)                   |   | x |  |
| 1.150.20.05 - Initial Noise Study   |   | x |  |
| 1.150.20.10 - Hazardous Waste Initial Site Assessment/Investigations          |   | x |  |
| 1.150.20.15 - Scenic Resources and Landscape Architecture Review              |   | x |  |
| 1.150.20.20 – Initial NEPA/404 Coordination                                   |   | x |  |
| 1.150.20.25 – Initial Biology Study   |   | x |  |
| 1.150.20.30 - Initial Records and Literature Search for Cultural Resources    |   | x |  |
| 1.150.20.40 - Initial Community Impact Analysis, Land Use, and Growth Studies |   | x |  |
| 1.150.20.45 - Initial Air Quality Study                                       |   | x |  |
| 1.150.20.50 - Initial Water Quality Studies                                   |   | x |  |

|   |   |   |  |
|---|---|---|--|
| 1.150.20.60 - Preliminary Environmental Analysis Report Preparation   |   | X |  |
| 1.150.20.65 - Initial Paleontology Study  |   | X |  |
| 1.150.25.05 - Draft PID   |   | X |  |
| 1.150.25.10 – Approved Exceptions to Design Standards   |   | X |  |
| 1.150.25.20 - PID Circulation, Review, and Approval   | X |   |  |
| 1.150.25.25 - Storm Water Data Report   |   | X |  |
| 1.150.25.30.05 – Cost Estimates for Alternatives  |   | X |  |
| 1.150.25.99 – Other PID Products  |   | X |  |
| 1.150.35 - Required Permits, Licenses, Agreements, and Certifications (PLACs) during Project Initiation Documents Development |   | X |  |
| 1.150.40 - PLACs During Project Initiation Documents Development  |   | X |  |
| 1.150.45 - Base Maps and Plan Sheets for Project Initiation Documents   |   | X |  |

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# **AGENDA ITEM 8**





| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |   |
|---|---|
| <b>DATE:</b>                                      | September 11, 2024  |
| <b>TO:</b>  | Riverside County Transportation Commission  |
| <b>FROM:</b>                                      | John Tarascio, Senior Capital Projects Manager<br>Erik Galloway, Projects Delivery Director   |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director  |
| <b>SUBJECT:</b>                                   | Cooperative Agreement with the Palo Verde Valley Transit Agency for the Bus Maintenance Facility Expansion and Hydrogen Fueling Station Project |

**STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Approve the draft Cooperative Agreement No. 24-62-099-00, with the Palo Verde Valley Transit Agency (PVVTA) for the Bus Maintenance Facility Expansion and Hydrogen Fueling Station Project (Project) in an amount not to exceed \$16,429,000;
- 2) Authorize Commission staff to serve as the lead agency on behalf of the PVVTA, as stated in the terms of Cooperative Agreement No. 24-62-099-00;
- 3) Authorize the Executive Director, pursuant to legal counsel review, to finalize negotiations with the PVVTA and execute the agreement;
- 4) Authorize the Executive Director, pursuant to legal counsel review, to execute future non-funding agreements and/or amendments on behalf of the Commission; and
- 5) Authorize the Executive Director, pursuant to legal counsel review, to acquire required parcels for the Project in accordance with the Commission’s Right of Way Policies and Procedures Manual.

**BACKGROUND INFORMATION:**

The PVVTA has identified a need to upgrade its bus maintenance facility and establish a new hydrogen fueling station to support a new fleet of hydrogen-powered buses. This upgrade is aimed at addressing the growing transportation needs of the community in Blythe and the surrounding areas. Hydrogen buses offer several advantages over conventional diesel or natural gas buses. These benefits include zero emissions, which lead to improved air quality, reduced greenhouse gas emissions, and decreased reliance on fossil fuels. To advance the Project, PVVTA has requested RCTC to serve as the lead agency for project approval and environmental document (PA&ED), plans specifications and estimate (PS&E), right of way (ROW), and construction phases. In preparation, PVVTA has secured a total of \$16,429,000 in funding allocated for the various phases of the Project.

## Cooperative Agreement

The draft cooperative agreement establishes a partnership between the Commission and PVVTA for the Project. Under this agreement, RCTC will lead the Project phases, which include PA&ED, PS&E, ROW acquisition, and construction. PVVTA will support RCTC and reimburse the Commission for all associated costs. The agreement also outlines procedures for amendments, reporting, handling disputes, as well as other general matters related to the delivery of the Project. It ensures compliance with applicable laws and funding requirements and stipulates that any additional funding needs must be secured by PVVTA.

Currently, the draft cooperative Agreement No. 24-62-099-00 is under review by each agency and legal concurrence is pending. It is not anticipated that notable changes will be required as a result of the pending reviews. This agreement will not be executed until legal counsel approval has been received.

### **FISCAL IMPACT:**

Funding for the Project will be directly obtained by PVVTA consisting of Senate Bill (SB) 125 Transit Intercity Rail Capital Program (TIRCP) funds and State Transit Assistance (STA) funds. The current Project funding breakdown is shown in Table 1 below:

**Table 1**


|   | <b>Phase of the Project</b> | <b>Dollar Amount</b> | <b>Fund Source</b> |
|---|-----------------------------|----------------------|--------------------|
| 1 | PA&ED/PS&E/ROW/Construction | \$ 16,010,000        | SB 125 TIRCP funds |
| 2 | PA&ED/PS&E/ROW/Construction | 419,000              | STA funds          |
|   | <b>Total</b>                | <b>\$ 16,429,000</b> |                    |

The estimated expenditures for the Project by fiscal year is shown in Table 2 below:

**Table 2**

| <b>Fiscal Year</b> | <b>Estimated Expenditures</b> |
|--------------------|-------------------------------|
| FY25               | \$1,422,000                   |
| FY26               | \$1,471,000                   |
| FY27               | \$7,354,800                   |
| FY28               | \$6,181,200                   |
| <b>Total</b>       | <b>\$16,429,000</b>           |

Should costs exceed the total funding available, staff will provide PVVTA enough time to identify the gap in funding required. Any additional funds above the \$16,429,00 not to exceed amount will be included in PVVTA's future Short-Range Transit Plan for Commission approval.

| Financial Information       |   |       |                           |                    |                             |
|-----------------------------|---|-------|---------------------------|--------------------|-----------------------------|
| In Fiscal Year Budget:      | Yes   | Year: | FY 2024/25<br>FY 2025/26+ | Amount:            | \$1,422,000<br>\$15,007,000 |
| Source of Funds:            | SB 125 TIRCP<br>STA Funds   |       |                           | Budget Adjustment: | No                          |
| GL/Project Accounting No.:  | 002234 XXXXX 00000 0000 243 62 XXXXX (Various)                                    |       |                           |                    |                             |
| Fiscal Procedures Approved: |  |       |                           | Date:              | 08/16/2024                  |

Attachment: PVVTA Draft Cooperative Agreement No. 24-62-099-00



**COOPERATIVE AGREEMENT  
BETWEEN**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION AND THE  
PALO VERDE VALLEY TRANSIT AGENCY**

**FOR THE BUS MAINTENANCE FACILITY EXPANSION AND HYROGEN FUELING  
STATION PROJECT, PROJECT APPROVAL AND ENVIRONMENTAL DOCUMENT;  
PLANS, SPECIFICATIONS, AND ESTIMATES; RIGHT OF WAY; AND  
CONSTRUCTION PHASES**

1. Parties and Date. This Cooperative Agreement is made and entered into this ### day of ####, 2024 (“Effective Date”), by and between the Riverside County Transportation Commission (“RCTC”) and the Palo Verde Valley Transit Agency (“PVVTA”). RCTC and the PVVTA are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

2. Recitals.

2.1 The PVVTA is undertaking the Bus Maintenance Facility Expansion and Hydrogen Fueling Station Project, which includes the design and construction of a new bus maintenance facility and a hydrogen fueling station for their future zero-emission bus fleet (“Project”).

2.2 *Reserved for funding source details.*

2.3 The PVVTA has requested that RCTC serve as the lead agency for the Project Approval and Environmental Document (“PA/ED”) Phase, Plans, Specifications and Estimate (“PS&E”) Phase, Right-of-Way (“ROW”) Phase and Construction Phase (collectively, “Project Phases”), with the PVVTA to provide support and to fund all approved costs incurred by RCTC for the Project Phases including, but not limited to, RCTC staff and consultant project management costs, ROW acquisition costs, construction management costs, construction contractor costs and legal services.

2.4 RCTC has agreed to act as the lead agency for the Project Phases and to be the contracting entity for the services necessary to execute the Project.

2.5 The Project is located adjacent to and within the jurisdictional boundaries of the City of Blythe (City) and may require improvements to streets within the City.

2.6 The purpose of this Cooperative Agreement is to facilitate the Parties' cooperation on the Project and outline their roles and obligations at a high level. The Parties agree to enter into future Implementation Amendments which will describe the

Project Phases, the Parties' obligations, and Project requirements in greater detail to supplement this Cooperative Agreement.

2.7 PVVTA shall be the direct recipient of any federal and state funds provided for the Project, and shall utilize the funding disbursed solely for the Project.

### 3. Terms.

3.1 Estimated Cost of Project Phases. The Parties estimate that the total cost for the Project Phases to be incurred by RCTC, including, but not limited to, RCTC staff and consultant project management costs, PA/ED consultant costs, PS&E consultant costs, ROW acquisition costs, legal services, construction management costs, construction contractor costs, commissioning costs, outreach costs, and other direct costs shall be Sixteen Million, Four Hundred Twenty-Nine Thousand Dollars (\$16,429,000) ("Estimated Total Project Costs"). The Estimated Total Project Costs are further detailed in Exhibit A attached to this Cooperative Agreement and incorporated herein by reference.

#### 3.2 Project Phases of Work.

A. The Project will be carried out in Phases and the Parties will enter into detailed Implementation Amendments setting forth the scope of each Phase and the responsibilities of each party during each Phase prior to beginning any Phase. Notwithstanding the generality of the previous sentence, RCTC shall be the lead agency for the Project Phases. Any and all costs and expenses incurred by RCTC for the Project Phases, and approved by PVVTA, shall be reimbursed by the PVVTA using the SB 125 funds allocated to the Project. The Parties agree that RCTC shall not have any obligation to fund the Project Phases using its own funds. RCTC agrees not to incur costs beyond the Estimated Total Project Costs without advance written approval from PVVTA. In the case that funds in addition to the Estimated Total Project Costs are needed to complete the Project Phases, the PVVTA 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 Project and shall complete such work and services required for the Project Phases within the term of this Cooperative Agreement, as provided in Section 3.3, unless extended by mutual agreement of the Parties.

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 Project Phases have been completed, unless earlier terminated as provided in this Cooperative Agreement.

3.4 Cooperation. RCTC and the PVVTA agree to cooperate in the development of the documents required for Project, completion of the Project Phases, and the implementation of this Cooperative Agreement.

3.5 Reporting. RCTC shall, in a timely manner, provide milestone reports to the PVVTA, detailing the progress of the Project Phases.

3.6 Obligations of the PVVTA.

A. RCTC shall submit invoices no less frequently than quarterly in any quarter in which reimbursable expenses are incurred but not to exceed once per month. The PVVTA shall timely review and pay approved invoices within thirty (30) days. The PVVTA shall promptly notify RCTC of any disputed charges.

B. The PVVTA may provide an oversight project manager or other PVVTA staff to oversee any Project Phase work or services at its own cost.

C. The PVVTA shall timely review design plans for the Project including, but not limited to, the PA/ED, PS&E and ROW documents and provide any approvals or comments within thirty (30) days of receipt of the plans, or within a different period specified by the Parties. If the PVVTA fails to provide any comments or its approval within said time period, RCTC shall provide notice to the PVVTA that the design plans or construction documents shall be deemed approved by the PVVTA if no comments are received within an additional 15 days. The PVVTA shall inspect any other Project Phase work or services upon written notice of completion of the work or services by RCTC to the PVVTA, and shall timely provide approval or notification of any nonconformities identified by the PVVTA within thirty (30) days, or such other reasonable period requested by RCTC.

D. The PVVTA shall not take any action with the intent or effect of unnecessarily impacting the timely implementation of the Project by RCTC.

E. The PVVTA shall work cooperatively and shall provide prompt responses and assistance to RCTC to ensure the timely completion of the Project Phases.

F. The PVVTA shall promptly exercise all rights it may have, or shall assist RCTC in exercising rights on behalf of the PVVTA, under any –agreements for utilities that require relocation or protection for the Project.

G. To the extent applicable, PVVTA shall be the direct recipient of any federal and state funds to be provided for the Project, and shall invoice the applicable funding entity for Project costs at minimum once every six months, or as otherwise required.

H. PVVTA shall endeavor to notify RCTC of all funding sources for a Project phase prior to RCTC's procurement of any contracts for such Project phase, and shall provide copies of all grant and funding agreements to RCTC immediately upon receipt. RCTC will comply with funding requirements, and all local, state, and federal laws and regulations applicable to the Project.

### 3.7 Obligations of RCTC

A. RCTC shall serve as the lead agency for the Project Phases. RCTC shall be responsible for procuring, retaining and overseeing consultant(s) and contractor(s) as required or reasonably necessary for completion of the Project Phases.

B. RCTC shall provide the PVVTA with at least 30 calendar days to review and approve all design and construction documents for the Project prior to finalization of such design document for the Project for public bidding purposes.

C. RCTC shall invoice the PVVTA for Project Phases expenses, 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 PVVTA shall be in a form and include such detail and supporting documentation as reasonably requested by the PVVTA.

D. RCTC shall create any necessary Project records, reports and financial accounts to permit disbursement of allocated funds to RCTC, and shall ensure, to the extent applicable, that federal and state reporting requirements are met.

E. As of the Effective Date, and subject to PVVTA's obligation to notify RCTC of funding sources to be used for the Project, RCTC shall be responsible for ensuring that the Project Phases are completed in compliance with all applicable federal and state law, rules and regulations to ensure future federal funding eligibility of the Project.

F. RCTC shall process any required Federal Transportation Improvement Program (FTIP) amendments.

G. Additional ROW Phase Obligations.

1. RCTC is responsible for all ROW work required for the Project except as expressly set forth in this Cooperative Agreement.

2. RCTC shall make all necessary arrangements with utility owners for the timely accommodation, protection, relocation, or removal of any existing utility facilities that conflict with construction of the Project.

3. RCTC shall provide PVVTA a copy of conflict maps, relocation plans, proposed notices to owner, reports of investigation, and utility agreements (if applicable) for PVVTA's concurrence prior to issuing the notices to owner and executing the utility agreement. All utility conflicts will be fully addressed prior to ROW certification and all arrangements for the protection, relocation, or removal of all conflicting facilities will be completed prior to construction contract award and included in the Project plans, specifications, and estimate.

4. RCTC will provide a land surveyor licensed in the State of California to be responsible for surveying and right-of-way engineering. All survey and



right-of-way engineering documents will bear the professional seal, certificate number, registration classification, expiration date of certificate, and signature of the responsible surveyor.

5. Acquisition of ROW will not occur prior to the approval of the environmental document without written approval from RCTC, the CEQA lead agency for the Project.

6. RCTC will utilize a properly licensed consultant for all ROW activities. RCTC shall provide the PVVTA with copies of appraisal reports and acquisition documents. RCTC will prepare ROW certification prior to advertising the construction contract. Physical and legal possession of the ROW must be completed prior to advertising the construction contract, unless Parties mutually agree to other arrangements in writing.

7. RCTC shall be the lead agency on eminent domain activities, if required for the Project.

8. Title to any property to be transferred to PVVTA by RCTC shall be free of all encumbrances and liens, except as to those items which PVVTA agrees are not in conflict with use of the property for its intended purposes. Upon acceptance, RCTC will provide PVVTA with a policy of title insurance in PVVTA's name.

### 3.8 Mutual Indemnification.

A. RCTC shall, at its sole cost and expense, indemnify, defend and hold the PVVTA, its officials, officers, employees, consultants and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, judgments, penalties, damages or injuries, in law or in equity, to property or persons, including wrongful death, whether actual, alleged or threatened, which arise in any manner out of, pertain to, or relate to, in whole or in part, to any negligent acts, omissions or breach of law, recklessness, 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 but not limited to the payment of expert witness fees and reasonable attorneys' fees and costs.

B. The PVVTA shall, at its sole cost and expense, indemnify, defend and hold RCTC and its officials, officers, employees, consultants and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, judgments, penalties, damages or injuries, in law or in equity, to property or persons, including wrongful death, whether actual, alleged or threatened, which in any manner arise out of, pertain to, or relate to, in whole or in part, to any negligent acts, omissions or breach of law, recklessness, or willful misconduct of PVVTA, its officials, officers, employees, agents, consultants or contractors in the performance of PVVTA's obligations under this Cooperative Agreement, including but not limited to the payment of expert witness fees and reasonable attorneys' fees and costs.

3.9 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 the mutual consent of the Parties by an instrument in writing.

3.10 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.

3.11 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 Funding Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

3.12 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.

3.13 Third Party Beneficiaries. There are no third-party beneficiaries to this Cooperative Agreement.

3.14 Termination. Any Party may terminate this Cooperative Agreement for any reason by giving thirty (30) days written notice thereof.

3.15 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 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.

3.16 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.

3.17 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 PVVTA: Palo Verde Valley Transit Agency  
415 North Main Street  
Blythe, CA 92225  
Attention: General Manager  
gmanager@pvvta.com

Copy to: Hanson Bridgett, LLP  
425 Market Street, 26th Floor  
San Francisco, CA 94105  
Attention: Katherine M. Tsou  
ktsou@hansonbridgett.com

Depending upon the method of transmittal, notice shall be deemed received as follows: by email or 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.

3.18 Time of Performance. Time is of the essence in the performance of this Agreement.

3.19 Governing Law. This Agreement is in all respects governed by California law and venue for any dispute shall be in Riverside County.

3.20 Insurance. The Parties each verify that they are self-insured or maintain insurance coverage through a Joint Powers Authority in reasonable and customary amounts for their respective operations. RCTC will ensure that its contractors performing work for the Project possess the requisite insurance and that such contracts include PVVTA as an additional insured and an indemnitee to the same extent as RCTC.

3.21 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.

3.22 Counterparts. This Cooperative Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

3.23 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.

3.24 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.

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

DRAFT

**SIGNATURE PAGE  
TO  
FOR THE BUS MAINTENANCE FACILITY EXPANSION AND HYROGEN FUELING  
STATION PROJECT, PROJECT APPROVAL AND ENVIRONMENTAL DOCUMENT;  
PLANS, SPECIFICATIONS, AND ESTIMATES; RIGHT OF WAY; AND  
CONSTRUCTION PHASES COOPERATIVE AGREEMENT**

**IN WITNESS WHEREOF**, the parties hereto have executed this Cooperative Agreement as of the Effective Date.

**RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION**

**PALO VERDE VALLEY TRANSIT  
AGENCY**

By: \_\_\_\_\_  
Aaron Hake, Executive Director

By: \_\_\_\_\_  
K. George Colangeli, General Manager

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Best Best & Krieger LLP  
Counsel to RCTC

By: \_\_\_\_\_  
Hanson Bridgett, LLP  
Counsel to PVVTA

**ATTEST:**

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

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

## EXHIBIT "A"

### Project Phase Cost Estimate Breakdown

|  |                     |
|--|---------------------|
| <b>RCTC Expenses (Staff/Bechtel/Legal/Support) During Project Phases</b> | <b>\$1,130,000</b>  |
| <b>Right of Way expenses</b>   | <b>\$205,000</b>    |
| <b>PA/ED Expenses</b>  | <b>\$707,700</b>    |
| <b>PS&amp;E Expenses</b>   | <b>\$1,415,300</b>  |
| <b>Construction Management Expenses</b>                                  | <b>\$1,326,900</b>  |
| <b>Construction Capital Expenses</b>                                     | <b>\$8,056,500</b>  |
| <b>Contingencies</b>   | <b>\$3,587,600</b>  |
| <b>Total</b>   | <b>\$16,429,000</b> |

# **AGENDA ITEM 9**





| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |  |
|---|--|
| <b>DATE:</b>                                      | September 11, 2024   |
| <b>TO:</b>  | Riverside County Transportation Commission   |
| <b>FROM:</b>                                      | Western Riverside County Programs and Projects Committee<br>John Tarascio, Senior Capital Projects Manager<br>Erik Galloway, Project Delivery Director |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director   |
| <b>SUBJECT:</b>                                   | Interstate 15 SMART Freeway Pilot Project Construction Agreement with Granite Construction Company Inc.  |

**WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE AND STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Find the bids submitted by All American Asphalt, Inc. and Beador Construction Company, Inc. nonresponsive and award Agreement No. 24-31-054-00 to Granite Construction Company (Granite) to construct the Interstate 15 SMART Freeway Pilot Project (Project), in the amount of \$13,861,000 plus a contingency amount of \$1,940,540, for a total not to exceed amount of \$15,801,540;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to finalize and execute the Agreement on behalf of the Commission; and
- 3) Authorize the Executive Director, or designee, to approve contingency work as may be required for the Project.

**BACKGROUND INFORMATION:**

At the Annual Commission Workshop held on January 31, 2020, Staff gave a presentation to the Commission outlining the current state of technology-based traffic management strategies, referred to as “SMART Freeways”. The Commission then directed staff to initiate a feasibility study for a pilot project along Interstate 15, from the San Diego County line to Winchester Road in Temecula. The proposed pilot project would evaluate a traffic control approach using a software called STREAMS, developed by an Australian company called Transmax Pty Ltd (Transmax).

The Interstate 15 Corridor Ad Hoc Committee subsequently received an update on the project status on September 28, 2020, that outlined the framework for the next steps to be taken after completing the feasibility study.

At its May 12, 2021, Commission meeting, the Commission awarded Agreement No. 21-31-063-00 to WSP USA Inc. (WSP), to provide professional services for preliminary

engineering, environmental documents, final design, construction support, and operation support services for the Project. In addition, the Committee approved Agreement No. 21-31-059-00 with Caltrans to obtain State Highway Operation and Protection Program (SHOPP) Minor Funds contribution of \$1.2 million towards the Project's construction.

At its November 9, 2022, Commission meeting, the Commission approved the award of Agreement No. 22-31-098-00 to Anser Advisory for construction management services, materials testing, and construction surveying for the Project.

At its September 13, 2023, Commission meeting, the Commission approved the award of Agreement No. 23-031-035-00 and Agreement No. 23-031-034-00 to Transmax for comprehensive professional services and for Software as a Service (SaaS), respectively.

All of the actions listed here, resulted in the design of the project being approved by Caltrans in September 2023 and allowed the project to proceed into the construction phase.

## **DISCUSSION**

### **Project Scope**

The scope of the Project is to install and configure field devices and software to implement active traffic management strategies to the northbound direction of I-15 from the San Diego County line to Winchester Road in the city of Temecula for a two-year evaluation period. The integrated traffic management system to be piloted was developed in Australia by the Victoria Department of Transport and Planning (VicRoads) and implemented there by Transmax. The Project will be a first-of-a-kind implementation in California.

The Project will include the following elements:

- Improvements to the I-15 northbound entrance ramps at Temecula Parkway and Rancho California Road, including pavement widening, barriers, and miscellaneous civil improvements;
- Installation of an Intelligent Transportation System, which includes enhanced traffic detection devices consisting of traditional loop detectors, TIRTLs (The Infra-Red Traffic Logger) and Coordinated Adaptive Ramp Metering (CARM) at northbound Temecula Parkway, Rancho California Road, and Winchester Parkway (ITS improvements); and
- Implementation of the STREAMS software platform provided by Transmax to monitor and operate the CARM system during the two-year pilot period.

Upon completion of the civil improvements and the installation and configuration of the ITS Improvements and software, the system will be in operation for two years during the pilot period. Throughout this pilot period, routine monitoring reports will be compiled and presented to both the Commission and Caltrans. These reports will evaluate the system's performance against

predefined criteria, including travel time and savings, average speeds, traffic flow during peak hours, reduction in congestion duration, as well as ramp meter queue length and duration.

Upon conclusion of the pilot period, the Commission, in collaboration with Caltrans, will evaluate the collected data and reports to determine whether to extend the system's operation beyond the pilot period. Concurrently, discussions will be conducted with Caltrans to identify funding sources and establish any necessary agreements to support the continued operation of the SMART freeway system, should the outcomes prove favorable, and the decision is made to continue its management under Caltrans.

## **Procurement**

On December 22, 2023, the Commission advertised Invitation for Bids (IFB) No. 24-31-054-00 for construction of the Project. A public notice was advertised in the Press Enterprise, and the complete IFB, including all contract documents, was posted on the Commission's PlanetBids website, which is accessible through the Commission's website. Electronic mail messages were sent to vendors registered in the Commission's PlanetBids database that fit the IFB qualifications. Eighty-Nine firms downloaded the IFB. A pre-bid conference was held on January 11, 2024, and on February 07, 2024, one bid was received from All American Asphalt (AAA) and publicly opened.

The bid received from AAA was higher than the engineer's estimate by 49.6 percent. Staff concluded that a single bid would not adequately serve the public interest in obtaining the best price for the project.

Staff reached out to firms who had downloaded the bid documents but refrained from submitting bids to ascertain the factors contributing to the lack of participation in the procurement, especially considering that the civil and electrical portions of the Project were common for highway projects. Input received suggested two primary reasons for the low bidder turnout:

1. **Extended Liability:** The 2-year extended maintenance scope of work included as part of the Project would prevent the firms from obtaining relief from maintenance from Caltrans and would extend their liabilities beyond the completion of the construction work.
2. **Timing Conflicts:** Bidders highlighted conflicts with other projects in Southern California, indicating that the timing of the bid solicitation overlapped with other procurements ongoing at the same time.

After considering the feedback received from the firms, staff decided to remove the maintenance scope from the construction package and develop a standalone contract for the work, which will be procured at a later date.

Subsequently, on February 22, 2024, the Commission readvertised Invitation for Bids (IFB) No. 24-31-054-00 for construction of the Project. A public notice was advertised in the Press Enterprise, and the complete IFB, including all contract documents, was posted on the

Commission’s PlanetBids website, which is accessible through the Commission’s website. Electronic mail messages were sent to vendors registered in the Commission’s PlanetBids database that fit the IFB qualifications. Sixty-nine (69) firms downloaded the IFB. Eleven (11) were located in Riverside County. A pre-bid conference was held on March 07, 2024, and on March 27, 2024, four (4) bids were received and publicly opened. A summary of the bids received is shown in Table 1.

**Table-1 Summary of Bids**

|   | Responsive Bidder<br>(In order from low bid to high bid) | Bid Amount    |
|---|--|---------------|
|   | Engineers Estimate                                       | \$ 11,891,466 |
| 1 | Beador Construction Company, Inc.                        | \$ 12,895,300 |
| 2 | All American Asphalt                                     | \$ 13,121,693 |
| 3 | Granite Construction Company                             | \$ 13,861,000 |
| 4 | Coffman Specialties, Inc.                                | \$ 13,965,000 |

The basis of award for a public works contract is the lowest responsive and responsible bidder as defined by the Commission’s procurement policy, state law, and subject to applicable federal funding source requirements. The Bid Comparison Analysis Table (Attachment 1) shows the bid amounts of each bidder, the total price per item and percent variation from the engineer’s estimate for each bid item. The bid price submitted by Granite was 16.56 percent higher than the engineer’s estimate. Although Granite’s bid is higher than the engineer’s estimate, an analysis of the bid did not find irregularities or omissions.

***Issues with Lowest and Second Lowest Bids; Recommendation for Finding Lowest and Second Lowest Bids Nonresponsive***

Since the Project will be funded utilizing Federal Highway Administration Funds (FHWA) funds, the Project is subject to a Disadvantaged Business Enterprise (DBE) goal established in accordance with the Caltrans DBE Program, and with input from Caltrans. The DBE goal for the Project is 22 percent. Pursuant to the federal DBE requirements (49 CFR Part 26), bidders must either meet the DBE goal or submit evidence of making adequate good faith efforts (GFE) to meet the goal.

GFE are determined based on factors established in the federal regulations using a Caltrans required bid form that was included as part of the Project bid documents. The Commission’s determination of whether a bidder has met the GFE requirements is subject to Caltrans review and concurrence. In accordance with the federal regulations and the Caltrans Local Assistance Procedures Manual, prior to rejecting a bid as nonresponsive for failing to meet the DBE goal or make adequate GFE, the Commission must provide bidders with the opportunity for an Administrative Reconsideration Hearing.

Neither the low bidder, Beador Construction Company, Inc. (Beador) nor the second low bidder, All American Asphalt (All American) met the DBE Goal. The Commission, in conjunction with its DBE consultant, reviewed the GFE packages submitted by Beador and All American, and both were found to be inadequate. Caltrans concurred with these findings.

On June 3, 2024, Beador participated in an Administrative Reconsideration Hearing, and on June 14, 2024, All American participated in an Administrative Reconsideration Hearing. The following Commission personnel presided over the hearings as Administrative Reconsideration Panel members: Deputy Executive Director, Project Delivery Director and Administrative Services Director/Clerk of the Board (Panel). The Panel members had not participated in the original GFE review or determination.

Based on all the evidence, including the information presented at each hearing, the Panel determined that Beador and All American, respectively, did not meet the GFE requirements. The Commission cannot award a FHWA funded contract to a contractor that did not meet the DBE goal or make adequate GFE. Therefore, staff recommends to the Commission that Beador's and All American's bids be found nonresponsive.

#### ***Findings Regarding Granite's Bid; Recommendation for Award***

Granite submitted a DBE commitment form that appeared to meet the DBE goal. However, there were some questions regarding certain bid items listed as to be performed by DBEs. The Commission reviewed Granite's GFE package and found that Granite did make adequate GFE. Caltrans concurred with this finding. All other aspects of Granite's bid were reviewed and determined to be responsive. Granite was also found to be a responsible bidder.

Therefore, the 3<sup>rd</sup> low bidder, Granite, was found to be the lowest responsible bidder submitting a responsive bid in the amount of 13,861,000. Staff recommends award of the construction contract for the Project to Granite.

A contingency amount of \$1,940,540 is recommended for this agreement to address any unforeseen conditions encountered during construction. The increased contingency amount can be attributed to several factors. Firstly, the Project is a first-of-a-kind project in the state of California. Additionally, multiple projects will be simultaneously underway within the same project area, necessitating coordination with the French Valley Parkway Project – Phase II enhancements, as well as two distinct auxiliary lane projects that intersect with the Project footprint.


#### **FISCAL IMPACT:**

The Interstate 15 SMART Freeway Pilot Project Construction Agreement No. 24-31-054-00 will be funded by the following fund sources as summarized in Table 2:

**Table 2 - Funding Source Breakdown**

|   | Item                           | Dollar Amount        | Fund Source |
|---|--------------------------------|----------------------|-------------|
| 1 | CMAQ                           | \$ 9,363,540         | Federal     |
| 2 | Congressional Earmark (CPFCDs) | \$ 5,000,000         | Federal     |
| 3 | DEMO – Repurposed Earmark      | \$ 238,000           | Federal     |
| 4 | State Cash – CT Minor Program  | \$ 1,200,000         | State       |
|   | <b>Total</b>                   | <b>\$ 15,801,540</b> |             |

The construction duration for the project is 158 working days and will be completed within fiscal year 2025.

| Financial Information       |   |       |            |                    |              |
|-----------------------------|---|-------|------------|--------------------|--------------|
| In Fiscal Year Budget:      | Yes   | Year: | FY 2024/25 | Amount:            | \$15,801,540 |
| Source of Funds:            | CMAQ, CPFCDs, DEMO, State Cash  |       |            | Budget Adjustment: | No           |
| GL/Project Accounting No.:  | 003051 81301 00000 0000 / 261 31 81301 Construction                                 |       |            |                    |              |
| Fiscal Procedures Approved: |  |       |            | Date:              | 08/15/2024   |

**Attachments:**

- 1) Bid Comparison Analysis Table
- 2) Bid Analysis Report
- 3) Draft Agreement No. 24-31-054-00 with Granite

|   |   |          |   |     |   |
|---|---|----------|---|-----|---|
| <p><i>Approved by the Western Riverside County Programs and Projects Committee on<br/>August 26, 2024</i></p> |   |          |   |     |   |
| In Favor:   | 9 | Abstain: | 0 | No: | 0 |

**INTERSTATE 15 SMART FREEWAY PILOT PROJECT - ENGINEERING ESTIMATE AND BIDDER'S PRICE**

Bid Opening Date: March 27, 2024 2:00 PM (PDT)

|               |                                  |              |
|---------------|----------------------------------|--------------|
| <b>Legend</b> | > \$100k below ENGR EST          | > Other Bids |
|               | > \$200k above Average Bid Price | < Other bids |
|               | > 50% of Engineering Estimate    |              |
|               | < -75% of Engineering Estimate   |              |

| ITEM NUM                      | ITEM CODE | ITEM DESCRIPTION   | UNIT OF MEASURE | UNIT PRICE (A) | ENGR EST QTY (B) | ENGR EST AMOUNT (C = A x B) | BID QTY (D) | ADJUSTED ESTIMATE (E = A x D) | %OF ENGR EST | ENGINEERING ESTIMATE |             |                | LOW BIDDER<br>Beador Construction Company, Inc |             |                | SECOND BIDDER<br>All American Asphalt |             |                | THIRD BIDDER<br>Granite Construction Company |             |                | FOURTH BIDDER<br>Coffman Specialties, Inc. |  |  | AVERAGE OF BID AMOUNTS |
|-------------------------------|-----------|--|-----------------|----------------|------------------|-----------------------------|-------------|-------------------------------|--------------|----------------------|-------------|----------------|--|-------------|----------------|---------------------------------------|-------------|----------------|--|-------------|----------------|--|--|--|------------------------|
|                               |           |  |                 |                |                  |                             |             |                               |              | PRICE (\$)           | AMOUNT (\$) | % VAR ENGR EST | PRICE (\$)                                     | AMOUNT (\$) | % VAR ENGR EST | PRICE (\$)                            | AMOUNT (\$) | % VAR ENGR EST | PRICE (\$)                                   | AMOUNT (\$) | % VAR ENGR EST |  |  |  |                        |
| <b>CONSTRUCTION BID ITEMS</b> |           |  |                 |                |                  |                             |             |                               |              |                      |             |                |  |             |                |                                       |             |                |  |             |                |  |  |  |                        |
| 1                             | 015299    | ALTERNATIVE IN-LINE TERMINAL SYSTEM TL-3   | EA              | \$ 4,000       | 32               | \$ 128,000                  | 32          | \$ 128,000                    | 1%           | 4,700.00             | 150,400     | 18%            | 5,200.00                                       | 166,400     | 30%            | 4,300.00                              | 137,600     | 8%             | 4,750.00                                     | 152,000     | 19%            | 151,600                                    |  |  |                        |
| 2                             | 070030    | LEAD COMPLIANCE PLAN   | LS              | \$ 10,000      | 1                | \$ 10,000                   | 1           | \$ 10,000                     | 0%           | 7,500.00             | 7,500       | -25%           | 2,200.00                                       | 2,200       | -78%           | 5,000.00                              | 5,000       | -50%           | 10,000.00                                    | 10,000      | 0%             | 6,175                                      |  |  |                        |
| 3                             | 090105    | TIME-RELATED OVERHEAD (LS)   | WDAY            | \$ 4,000       | 158              | \$ 632,000                  | 158         | \$ 632,000                    | 5%           | 2,000.00             | 316,000     | -50%           | 1,450.00                                       | 229,100     | -64%           | 3,400.00                              | 537,200     | -15%           | 3,600.00                                     | 568,800     | -10%           | 412,775                                    |  |  |                        |
| 4                             | 120090    | CONSTRUCTION AREA SIGNS  | LS              | \$ 55,000      | 1                | \$ 55,000                   | 1           | \$ 55,000                     | 0%           | 125,000.00           | 125,000     | 127%           | 135,000.00                                     | 135,000     | 145%           | 40,000.00                             | 40,000      | -27%           | 135,000.00                                   | 135,000     | 145%           | 108,750                                    |  |  |                        |
| 5                             | 120100    | TRAFFIC CONTROL SYSTEM   | LS              | \$ 85,000      | 1                | \$ 85,000                   | 1           | \$ 85,000                     | 1%           | 645,830.90           | 645,831     | 660%           | 402,000.00                                     | 402,000     | 373%           | 285,000.00                            | 285,000     | 235%           | 400,000.00                                   | 400,000     | 371%           | 433,208                                    |  |  |                        |
| 6                             | 120103    | STATIONARY IMPACT ATTENUATOR VEHICLE   | WDAY            | \$ 750         | 100              | \$ 75,000                   | 100         | \$ 75,000                     | 1%           | 1,000.00             | 100,000     | 33%            | 1,630.00                                       | 163,000     | 117%           | 300.00                                | 30,000      | -60%           | 1,200.00                                     | 120,000     | 60%            | 103,250                                    |  |  |                        |
| 7                             | 120120    | TYPE III BARRICADE   | EA              | \$ 117         | 19               | \$ 2,223                    | 19          | \$ 2,223                      | 0%           | 80.00                | 1,520       | -32%           | 190.00   | 3,610       | 62%            | 50.00                                 | 950         | -57%           | 100.00                                       | 1,900       | -15%           | 1,995                                      |  |  |                        |
| 8                             | 120159    | TEMPORARY TRAFFIC STRIPE (PAINT)   | LF              | \$ 1           | 26,400           | \$ 13,200                   | 26,400      | \$ 13,200                     | 0%           | 0.60                 | 15,840      | 20%            | 0.70   | 18,480      | 40%            | 0.74                                  | 19,536      | 48%            | 1.00   | 26,400      | 100%           | 20,064                                     |  |  |                        |
| 9                             | 120165    | CHANNELIZER (SURFACE MOUNTED)  | EA              | \$ 45          | 220              | \$ 9,900                    | 220         | \$ 9,900                      | 0%           | 48.00                | 10,560      | 7%             | 50.00  | 11,000      | 11%            | 55.00                                 | 12,100      | 22%            | 35.00  | 7,700       | -22%           | 10,340                                     |  |  |                        |
| 10                            | 120204    | PORTABLE RADAR SPEED FEEDBACK SIGN SYSTEM DAY                                      | EA              | \$ 15,000      | 1                | \$ 15,000                   | 1           | \$ 15,000                     | 0%           | 8,050.00             | 8,050       | -46%           | 8,000.00                                       | 8,000       | -47%           | 9,600.00                              | 9,600       | -36%           | 5,000.00                                     | 5,000       | -67%           | 7,663                                      |  |  |                        |
| 11                            | 120320    | TEMPORARY BARRIER SYSTEM   | LF              | \$ 14          | 22,800           | \$ 319,200                  | 22,800      | \$ 319,200                    | 3%           | 16.00                | 364,800     | 14%            | 37.00  | 843,600     | 164%           | 20.00                                 | 456,000     | 43%            | 30.00  | 684,000     | 114%           | 587,100                                    |  |  |                        |
| 12                            | F 128652  | PORTABLE CHANGEABLE MESSAGE SIGN (LS)  | LS              | \$ 32,000      | 1                | \$ 32,000                   | 1           | \$ 32,000                     | 0%           | 35,000.00            | 35,000      | 9%             | 18,000.00                                      | 18,000      | -44%           | 35,000.00                             | 35,000      | 9%             | 20,000.00                                    | 20,000      | -38%           | 27,000                                     |  |  |                        |
| 13                            | 128654    | TEMPORARY AUTOMATED END OF QUEUE WARNING SYSTEM (TYPE 1) DAY                       | EA              | \$ 1,650       | 5                | \$ 8,250                    | 5           | \$ 8,250                      | 0%           | 8,050.00             | 40,250      | 388%           | 8,600.00                                       | 43,000      | 421%           | 200.00                                | 1,000       | -88%           | 25,000.00                                    | 125,000     | 1415%          | 52,313                                     |  |  |                        |
| 14                            | 128658    | END OF QUEUE MONITORING AND WARNING WITH TRUCK MOUNTED CHANGEABLE MESSAGE SIGN DAY | EA              | \$ 1,500       | 5                | \$ 7,500                    | 5           | \$ 7,500                      | 0%           | 8,050.00             | 40,250      | 437%           | 1,600.00                                       | 8,000       | 7%             | 1,800.00                              | 9,000       | 20%            | 5,000.00                                     | 25,000      | 233%           | 20,563                                     |  |  |                        |
| 15                            | 129100    | TEMPORARY CRASH CUSHION MODULE   | EA              | \$ 252         | 42               | \$ 10,584                   | 42          | \$ 10,584                     | 0%           | 5,000.00             | 210,000     | 1884%          | 248.00   | 10,416      | -2%            | 500.00                                | 21,000      | 98%            | 4,500.00                                     | 189,000     | 1686%          | 107,604                                    |  |  |                        |
| 16                            | 129150    | TEMPORARY TRAFFIC SCREEN   | LF              | \$ 5           | 22,800           | \$ 114,000                  | 22,800      | \$ 114,000                    | 1%           | 8.00                 | 182,400     | 60%            | 7.50   | 171,000     | 50%            | 6.00                                  | 136,800     | 20%            | 4.65   | 106,020     | -7%            | 149,055                                    |  |  |                        |
| 17                            | 130100    | JOB SITE MANAGEMENT  | LS              | \$ 62,000      | 1                | \$ 62,000                   | 1           | \$ 62,000                     | 1%           | 75,000.00            | 75,000      | 21%            | 56,000.00                                      | 56,000      | -10%           | 7,500.00                              | 7,500       | -88%           | 100,000.00                                   | 100,000     | 61%            | 59,625                                     |  |  |                        |
| 18                            | 130300    | PREPARE STORM WATER POLLUTION PREVENTION PLAN                                      | LS              | \$ 3,200       | 1                | \$ 3,200                    | 1           | \$ 3,200                      | 0%           | 3,500.00             | 3,500       | 9%             | 27,000.00                                      | 27,000      | 744%           | 2,300.00                              | 2,300       | -28%           | 5,000.00                                     | 5,000       | 56%            | 9,450                                      |  |  |                        |
| 19                            | 130320    | STORM WATER SAMPLING AND ANALYSIS DAY  | EA              | \$ 800         | 3                | \$ 2,400                    | 3           | \$ 2,400                      | 0%           | 750.00               | 2,250       | -6%            | 550.00   | 1,650       | -31%           | 285.00                                | 855         | -64%           | 500.00                                       | 1,500       | -38%           | 1,564                                      |  |  |                        |
| 20                            | 130330    | STORM WATER ANNUAL REPORT  | EA              | \$ 1,905       | 2                | \$ 3,809                    | 2           | \$ 3,809                      | 0%           | 2,000.00             | 4,000       | 5%             | 1,100.00                                       | 2,200       | -42%           | 450.00                                | 900         | -76%           | 2,000.00                                     | 4,000       | 5%             | 2,775                                      |  |  |                        |
| 21                            | 130530    | TEMPORARY HYDRAULIC MULCH (BONDED FIBER MATRIX)                                    | SQYD            | \$ 1           | 2,000            | \$ 2,000                    | 2,000       | \$ 2,000                      | 0%           | 1.60                 | 3,200       | 60%            | 2.20   | 4,400       | 120%           | 4.90                                  | 9,800       | 390%           | 3.00   | 6,000       | 200%           | 5,850                                      |  |  |                        |
| 22                            | 130570    | TEMPORARY COVER  | SQYD            | \$ 8           | 1,500            | \$ 12,000                   | 1,500       | \$ 12,000                     | 0%           | 2.80                 | 4,200       | -65%           | 4.00   | 6,000       | -50%           | 6.25                                  | 9,375       | -22%           | 5.00   | 7,500       | -38%           | 6,769                                      |  |  |                        |
| 23                            | 130610    | TEMPORARY CHECK DAM  | LF              | \$ 8           | 1,500            | \$ 12,000                   | 1,500       | \$ 12,000                     | 0%           | 9.40                 | 14,100      | 18%            | 15.00  | 22,500      | 88%            | 21.50                                 | 32,250      | 169%           | 5.00   | 7,500       | -38%           | 19,088                                     |  |  |                        |
| 24                            | 130640    | TEMPORARY FIBER ROLL   | LF              | \$ 5           | 10,000           | \$ 50,000                   | 10,000      | \$ 50,000                     | 0%           | 7.60                 | 76,000      | 52%            | 5.00   | 50,000      | 0%             | 9.00                                  | 90,000      | 80%            | 5.50   | 55,000      | 10%            | 67,750                                     |  |  |                        |
| 25                            | 130650    | TEMPORARY GRAVEL BAG BERM  | LF              | \$ 12          | 1,000            | \$ 11,780                   | 1,000       | \$ 11,780                     | 0%           | 12.00                | 12,000      | 2%             | 15.00  | 15,000      | 27%            | 24.00                                 | 24,000      | 104%           | 5.00   | 5,000       | -58%           | 14,000                                     |  |  |                        |
| 26                            | 130710    | TEMPORARY CONSTRUCTION ENTRANCE  | EA              | \$ 4,255       | 3                | \$ 12,765                   | 3           | \$ 12,765                     | 0%           | 7,000.00             | 21,000      | 65%            | 2,200.00                                       | 6,600       | -48%           | 8,400.00                              | 25,200      | 97%            | 5,500.00                                     | 16,500      | 29%            | 17,325                                     |  |  |                        |
| 27                            | 130730    | STREET SWEEPING  | LS              | \$ 45,000      | 1                | \$ 45,000                   | 1           | \$ 45,000                     | 0%           | 100,000.00           | 100,000     | 122%           | 37,000.00                                      | 37,000      | -18%           | 15,000.00                             | 15,000      | -67%           | 100,000.00                                   | 100,000     | 122%           | 63,000                                     |  |  |                        |
| 28                            | 130900    | TEMPORARY CONCRETE WASHOUT   | LS              | \$ 30,000      | 1                | \$ 30,000                   | 1           | \$ 30,000                     | 0%           | 75,000.00            | 75,000      | 150%           | 2,200.00                                       | 2,200       | -93%           | 2,000.00                              | 2,000       | -93%           | 17,500.00                                    | 17,500      | -42%           | 24,175                                     |  |  |                        |
| 29                            | 141103    | REMOVE YELLOW THERMOPLASTIC TRAFFIC STRIP (HAZARDOUS WASTE)                        | LF              | \$ 3           | 4,620            | \$ 13,860                   | 4,620       | \$ 13,860                     | 0%           | 2.80                 | 12,936      | -7%            | 3.00   | 13,860      | 0%             | 3.00                                  | 13,860      | 0%             | 3.00   | 13,860      | 0%             | 13,629                                     |  |  |                        |
| 30                            | 141120    | TREATED WOOD WASTE   | LB              | \$ 2           | 4,420            | \$ 8,840                    | 4,420       | \$ 8,840                      | 0%           | 1.60                 | 7,072       | -20%           | 3.00   | 13,260      | 50%            | 1.50                                  | 6,630       | -25%           | 2.50   | 11,050      | 25%            | 9,503                                      |  |  |                        |
| 31                            | 146002    | CONTRACTOR-SUPPLIED BIOLOGIST (LS)   | LS              | \$ 50,600      | 1                | \$ 50,600                   | 1           | \$ 50,600                     | 0%           | 65,000.00            | 65,000      | 28%            | 63,000.00                                      | 63,000      | 25%            | 45,700.00                             | 45,700      | -10%           | 50,000.00                                    | 50,000      | -1%            | 55,925                                     |  |  |                        |
| 32                            | 148005    | NOISE MONITORING   | LS              | \$ 8,607       | 1                | \$ 8,607                    | 1           | \$ 8,607                      | 0%           | 12,500.00            | 12,500      | 45%            | 16,000.00                                      | 16,000      | 86%            | 2,000.00                              | 2,000       | -77%           | 10,000.00                                    | 10,000      | 16%            | 10,125                                     |  |  |                        |
| 33                            | 170103    | CLEARING AND GRUBBING (LS)   | LS              | \$ 30,000      | 1                | \$ 30,000                   | 1           | \$ 30,000                     | 0%           | 55,000.00            | 55,000      | 83%            | 86,000.00                                      | 86,000      | 187%           | 457,000.00                            | 457,000     | 1423%          | 50,000.00                                    | 50,000      | 67%            | 162,000                                    |  |  |                        |
| 34                            | 190101    | ROADWAY EXCAVATION   | CY              | \$ 29          | 10,740           | \$ 311,460                  | 10,740      | \$ 311,460                    | 3%           | 70.00                | 751,800     | 141%           | 97.00  | 1,041,780   | 234%           | 80.00                                 | 859,200     | 176%           | 120.00                                       | 1,288,800   | 314%           | 985,395                                    |  |  |                        |
| 35                            | F 193030  | PERVIOUS BACKFILL MATERIAL   | CY              | \$ 150         | 570              | \$ 85,500                   | 570         | \$ 85,500                     | 1%           | 115.00               | 65,550      | -23%           | 285.00   | 162,450     | 90%            | 120.00                                | 68,400      | -20%           | 105.00                                       | 59,850      | -30%           | 89,063                                     |  |  |                        |
| 36                            | 198206    | SUBGRADE ENHANCEMENT GEOTEXTILE, CLASS A1  | SQYD            | \$ 10          | 6,380            | \$ 63,800                   | 6,380       | \$ 63,800                     | 1%           | 3.00                 | 19,140      | -70%           | 7.00   | 44,660      | -30%           | 12.00                                 | 76,560      | 20%            | 5.00   | 31,900      | -50%           | 43,065                                     |  |  |                        |
| 37                            | 260203    | CLASS 2 AGGREGATE BASE (CY)  | CY              | \$ 58          | 2,220            | \$ 128,760                  | 2,220       | \$ 128,760                    | 1%           | 90.00                | 199,800     | 55%            | 89.00  | 197,580     | 53%            | 102.00                                | 226,440     | 76%            | 120.00                                       | 266,400     | 107%           | 222,555                                    |  |  |                        |
| 38                            | 390100    | PRIME COAT   | TON             | \$ 1,500       | 12               | \$ 18,000                   | 12          | \$ 18,000                     | 0%           | 2,700.00             | 32,400      | 80%            | 2,000.00                                       | 24,000      | 33%            | 1,800.00                              | 21,600      | 20%            | 2,530.00                                     | 30,360      | 69%            | 27,090                                     |  |  |                        |
| 39                            | 390132    | HOT MIX ASPHALT (TYPE A)   | TON             | \$ 119         | 10,800           | \$ 1,285,200                | 10,800      | \$ 1,285,200                  | 11%          | 125.00               | 1,350,000   | 5%             | 153.00   | 1,652,400   | 29%            | 160.00                                | 1,728,000   | 34%            | 150.00                                       | 1,620,000   | 26%            | 1,587,600                                  |  |  |                        |
| 40                            | 390137    | RUBBERIZED HOT MIX ASPHALT (GAP GRADED)  | TON             | \$ 150         | 1,574            | \$ 236,100                  | 1,574       | \$ 236,100                    | 2%           | 190.00               | 299,060     | 27%            | 201.00   | 316,374     | 34%            | 260.00                                | 409,240     | 73%            | 225.00                                       | 354,150     | 50%            | 344,706                                    |  |  |                        |

**INTERSTATE 15 SMART FREEWAY PILOT PROJECT - ENGINEERING ESTIMATE AND BIDDER'S PRICE**

Bid Opening Date: March 27, 2024 2:00 PM (PDT)

|               |                                  |              |
|---------------|----------------------------------|--------------|
| <b>Legend</b> | > \$100k below ENGR EST          | > Other Bids |
|               | > \$200k above Average Bid Price | < Other bids |
|               | > 50% of Engineering Estimate    |              |
|               | < -75% of Engineering Estimate   |              |

| ITEM NUM | ITEM CODE | ITEM DESCRIPTION  | UNIT OF MEASURE | UNIT PRICE (A) | ENGR EST QTY (B) | ENGR EST AMOUNT (C = A x B) | BID QTY (D) | ADJUSTED ESTIMATE (E = A x D) | %OF ENGR EST | ENGINEERING ESTIMATE             |                      |                              |                           |            |             |                |            |             |                |            |             | AVERAGE OF BID AMOUNTS |
|----------|-----------|---|-----------------|----------------|------------------|-----------------------------|-------------|-------------------------------|--------------|----------------------------------|----------------------|------------------------------|---------------------------|------------|-------------|----------------|------------|-------------|----------------|------------|-------------|------------------------|
|          |           |   |                 |                |                  |                             |             |                               |              | LOW BIDDER                       |                      |                              | SECOND BIDDER             |            |             | THIRD BIDDER   |            |             | FOURTH BIDDER  |            |             |                        |
|          |           |   |                 |                |                  |                             |             |                               |              | Beador Construction Company, Inc | All American Asphalt | Granite Construction Company | Coffman Specialties, Inc. | PRICE (\$) | AMOUNT (\$) | % VAR ENGR EST | PRICE (\$) | AMOUNT (\$) | % VAR ENGR EST | PRICE (\$) | AMOUNT (\$) |                        |
| 41       | 394074    | PLACE HOT MIX ASPHALT DIKE (TYPE C)   | LF              | \$ 35          | 207              | \$ 7,245                    | 207         | \$ 7,245                      | 0%           | 6.30                             | 1,304                | -82%                         | 9.00                      | 1,863      | -74%        | 8.00           | 1,656      | -77%        | 4.50           | 932        | -87%        | 1,439                  |
| 42       | 394076    | PLACE HOT MIX ASPHALT DIKE (TYPE E)   | LF              | \$ 16          | 1,210            | \$ 19,360                   | 1,210       | \$ 19,360                     | 0%           | 6.30                             | 7,623                | -61%                         | 9.00                      | 10,890     | -44%        | 13.00          | 15,730     | -19%        | 4.50           | 5,445      | -72%        | 9,922                  |
| 43       | 394077    | PLACE HOT MIX ASPHALT DIKE (TYPE F)   | LF              | \$ 4           | 280              | \$ 1,120                    | 280         | \$ 1,120                      | 0%           | 6.30                             | 1,764                | 58%                          | 9.00                      | 2,520      | 125%        | 9.00           | 2,520      | 125%        | 4.50           | 1,260      | 13%         | 2,016                  |
| 44       | 397005    | TACK COAT   | TON             | \$ 700         | 9                | \$ 6,300                    | 9           | \$ 6,300                      | 0%           | 2,400.00                         | 21,600               | 243%                         | 881.00                    | 7,929      | 26%         | 1,500.00       | 13,500     | 114%        | 800.00         | 7,200      | 14%         | 12,557                 |
| 45       | 707467    | 36" REINFORCED CONCRETE PIPE RISER  | LF              | \$ 450         | 7                | \$ 3,150                    | 7           | \$ 3,150                      | 0%           | 1,000.00                         | 7,000                | 122%                         | 2,000.00                  | 14,000     | 344%        | 2,000.00       | 14,000     | 344%        | 1,500.00       | 10,500     | 233%        | 11,375                 |
| 46       | 710132    | REMOVE CULVERT (LF)   | LF              | \$ 100         | 10               | \$ 1,000                    | 10          | \$ 1,000                      | 0%           | 320.00                           | 3,200                | 220%                         | 370.00                    | 3,700      | 270%        | 80.00          | 800        | -20%        | 500.00         | 5,000      | 400%        | 3,175                  |
| 47       | 710150    | REMOVE INLET  | EA              | \$ 3,000       | 1                | \$ 3,000                    | 1           | \$ 3,000                      | 0%           | 4,825.00                         | 4,825                | 61%                          | 3,500.00                  | 3,500      | 17%         | 9,000.00       | 9,000      | 200%        | 7,500.00       | 7,500      | 150%        | 6,206                  |
| 48       | 710176    | SALVAGE FRAME AND GRATE   | EA              | \$ 40          | 1                | \$ 40                       | 1           | \$ 40                         | 0%           | 2,700.00                         | 2,700                | 6650%                        | 370.00                    | 370        | 825%        | 950.00         | 950        | 2275%       | 750.00         | 750        | 1775%       | 1,193                  |
| 49       | 710206    | ADJUST OVERSIDE DRAIN   | EA              | \$ 3,500       | 1                | \$ 3,500                    | 1           | \$ 3,500                      | 0%           | 4,825.00                         | 4,825                | 38%                          | 5,300.00                  | 5,300      | 51%         | 400.00         | 400        | -89%        | 3,500.00       | 3,500      | 0%          | 3,506                  |
| 50       | 721431    | CONCRETE (CONCRETE APRON)   | CY              | \$ 1,500       | 1.4              | \$ 2,100                    | 1.4         | \$ 2,100                      | 0%           | 2,700.00                         | 3,780                | 80%                          | 3,200.00                  | 4,480      | 113%        | 950.00         | 1,330      | -37%        | 5,300.00       | 7,420      | 253%        | 4,253                  |
| 51       | 729011    | ROCK SLOPE PROTECTION FABRIC (CLASS 8)                                      | SQYD            | \$ 11          | 1,100            | \$ 12,100                   | 1,100       | \$ 12,100                     | 0%           | 4.90                             | 5,390                | -55%                         | 6.00                      | 6,600      | -45%        | 6.00           | 6,600      | -45%        | 6.00           | 6,600      | -45%        | 6,298                  |
| 52       | F 750001  | MISCELLANEOUS IRON AND STEEL  | LB              | \$ 3           | 240              | \$ 720                      | 240         | \$ 720                        | 0%           | 18.00                            | 4,320                | 500%                         | 8.00                      | 1,920      | 167%        | 20.00          | 4,800      | 567%        | 5.00           | 1,200      | 67%         | 3,060                  |
| 53       | 810190    | GUARD RAILING DELINEATOR  | EA              | \$ 35          | 340              | \$ 11,900                   | 340         | \$ 11,900                     | 0%           | 44.00                            | 14,960               | 26%                          | 36.00                     | 12,240     | 3%          | 40.00          | 13,600     | 14%         | 35.00          | 11,900     | 0%          | 13,175                 |
| 54       | 810120    | REMOVE PAVEMENT MARKER  | EA              | \$ 2           | 910              | \$ 1,593                    | 910         | \$ 1,593                      | 0%           | 1.20                             | 1,092                | -31%                         | 1.00                      | 910        | -43%        | 1.25           | 1,138      | -29%        | 2.00           | 1,820      | 14%         | 1,240                  |
| 55       | 810170    | DELINEATOR (CLASS 1)  | EA              | \$ 75          | 37               | \$ 2,775                    | 37          | \$ 2,775                      | 0%           | 188.00                           | 6,956                | 151%                         | 310.00                    | 11,470     | 313%        | 128.00         | 4,736      | 71%         | 280.00         | 10,360     | 273%        | 8,381                  |
| 56       | 810230    | PAVEMENT MARKER (RETROREFLECTIVE)   | EA              | \$ 5           | 1,090            | \$ 4,905                    | 1,090       | \$ 4,905                      | 0%           | 5.00                             | 5,450                | 11%                          | 5.00                      | 5,450      | 11%         | 5.50           | 5,995      | 22%         | 4.00           | 4,360      | -11%        | 5,314                  |
| 57       | 820113    | TREATMENT BEST MANAGEMENT PRACTICE MARKER                                   | EA              | \$ 300         | 3                | \$ 900                      | 3           | \$ 900                        | 0%           | 375.00                           | 1,125                | 25%                          | 310.00                    | 930        | 3%          | 350.00         | 1,050      | 17%         | 250.00         | 750        | -17%        | 964                    |
| 58       | 820280    | REMOVE ROADSIDE SIGN (METAL POST)   | EA              | \$ 200         | 2                | \$ 400                      | 2           | \$ 400                        | 0%           | 160.00                           | 320                  | -20%                         | 470.00                    | 940        | 135%        | 350.00         | 700        | 75%         | 450.00         | 900        | 125%        | 715                    |
| 59       | 820300    | REMOVE ROADSIDE SIGN (STRAP AND SADDLE BRACKET METHOD)                      | EA              | \$ 200         | 1                | \$ 200                      | 1           | \$ 200                        | 0%           | 105.00                           | 105                  | -48%                         | 240.00                    | 240        | 20%         | 350.00         | 350        | 75%         | 225.00         | 225        | 13%         | 230                    |
| 60       | 820610    | RELOCATE ROADSIDE SIGN  | EA              | \$ 350         | 5                | \$ 1,750                    | 5           | \$ 1,750                      | 0%           | 535.00                           | 2,675                | 53%                          | 1,100.00                  | 5,500      | 214%        | 460.00         | 2,300      | 31%         | 1,000.00       | 5,000      | 186%        | 3,869                  |
| 61       | 820640    | RELOCATE ROADSIDE SIGN (STRAP AND SADDLE BRACKET METHOD)                    | EA              | \$ 375         | 4                | \$ 1,500                    | 4           | \$ 1,500                      | 0%           | 215.00                           | 860                  | -43%                         | 1,050.00                  | 4,200      | 180%        | 580.00         | 2,320      | 55%         | 1,000.00       | 4,000      | 167%        | 2,845                  |
| 62       | 820750    | FURNISH SINGLE SHEET ALUMINUM SIGN (0.063"-UNFRAMED)                        | SQFT            | \$ 19          | 200              | \$ 3,700                    | 200         | \$ 3,700                      | 0%           | 21.00                            | 4,200                | 14%                          | 30.00                     | 6,000      | 62%         | 60.00          | 12,000     | 224%        | 27.00          | 5,400      | 46%         | 6,900                  |
| 63       | 820815    | A ROADSIDE SIGN (PSST POST)   | EA              | \$ 2,300       | 3                | \$ 6,900                    | 3           | \$ 6,900                      | 0%           | 2,150.00                         | 6,450                | -7%                          | 980.00                    | 2,940      | -57%        | 1,400.00       | 4,200      | -39%        | 5,000.00       | 15,000     | 117%        | 7,148                  |
| 64       | 820840    | ROADSIDE SIGN - ONE POST  | EA              | \$ 400         | 11               | \$ 4,400                    | 11          | \$ 4,400                      | 0%           | 450.00                           | 4,950                | 13%                          | 980.00                    | 10,780     | 145%        | 930.00         | 10,230     | 133%        | 900.00         | 9,900      | 125%        | 8,965                  |
| 65       | 820860    | INSTALL SIGN (STRAP AND SADDLE BRACKET METHOD)                              | EA              | \$ 163         | 8                | \$ 1,300                    | 8           | \$ 1,300                      | 0%           | 265.00                           | 2,120                | 63%                          | 490.00                    | 3,920      | 202%        | 450.00         | 3,600      | 177%        | 450.00         | 3,600      | 177%        | 3,310                  |
| 66       | 832006    | MIDWEST GUARDRAIL SYSTEM (STEEL POST)                                       | LF              | \$ 45          | 6,130            | \$ 275,850                  | 6,130       | \$ 275,850                    | 2%           | 50.00                            | 306,500              | 11%                          | 40.00                     | 245,200    | -11%        | 46.00          | 281,980    | 2%          | 40.00          | 245,200    | -11%        | 269,720                |
| 67       | 832070    | VEGETATION CONTROL (MINOR CONCRETE)   | SQYD            | \$ 70          | 4,360            | \$ 305,200                  | 4,360       | \$ 305,200                    | 3%           | 165.00                           | 719,400              | 136%                         | 145.00                    | 632,200    | 107%        | 150.00         | 654,000    | 114%        | 125.00         | 545,000    | 79%         | 637,650                |
| 68       | 839580    | END ANCHOR ASSEMBLY (TYPE SFT-M)  | EA              | \$ 1,800       | 28               | \$ 50,400                   | 28          | \$ 50,400                     | 0%           | 2,000.00                         | 56,000               | 11%                          | 2,700.00                  | 75,600     | 50%         | 1,800.00       | 50,400     | 0%          | 2,500.00       | 70,000     | 39%         | 63,000                 |
| 69       | 839586    | A CONCRETE BARRIER MARKER   | EA              | \$ 40          | 35               | \$ 1,400                    | 35          | \$ 1,400                      | 0%           | 32.00                            | 1,120                | -20%                         | 39.00                     | 1,365      | -3%         | 230.00         | 8,050      | 475%        | 10.00          | 350        | -75%        | 2,721                  |
| 70       | 839607    | A SEVERE DUTY CRASH CUSHION   | EA              | \$ 45,000      | 1                | \$ 45,000                   | 1           | \$ 45,000                     | 0%           | 65,000.00                        | 65,000               | 44%                          | 51,000.00                 | 51,000     | 13%         | 42,800.00      | 42,800     | -5%         | 55,000.00      | 55,000     | 22%         | 53,450                 |
| 71       | 839654    | A CONCRETE BARRIER (TYPE 60MC) MOD TIRTL                                    | LF              | \$ 203         | 90               | \$ 18,270                   | 90          | \$ 18,270                     | 0%           | 900.00                           | 81,000               | 343%                         | 1,540.00                  | 138,600    | 659%        | 930.00         | 83,700     | 358%        | 750.00         | 67,500     | 269%        | 92,700                 |
| 72       | 839642    | CONCRETE BARRIER (TYPE 60MC)  | LF              | \$ 160         | 1,580            | \$ 252,800                  | 1,580       | \$ 252,800                    | 2%           | 180.00                           | 284,400              | 13%                          | 353.00                    | 557,740    | 121%        | 290.00         | 458,200    | 81%         | 260.00         | 410,800    | 63%         | 427,785                |
| 73       | 839644    | CONCRETE BARRIER (TYPE 60MF)  | LF              | \$ 372         | 85               | \$ 31,608                   | 85          | \$ 31,608                     | 0%           | 270.00                           | 22,950               | -27%                         | 1,110.00                  | 94,350     | 198%        | 735.00         | 62,475     | 98%         | 850.00         | 72,250     | 129%        | 63,006                 |
| 74       | F 839744  | CONCRETE BARRIER (TYPE 836 MODIFIED) (F)                                    | LF              | \$ 375         | 8.4              | \$ 3,150                    | 8.0         | \$ 3,000                      | 0%           | 1,610.00                         | 12,880               | 329%                         | 2,200.00                  | 17,600     | 487%        | 7,100.00       | 56,800     | 1793%       | 4,200.00       | 33,600     | 1020%       | 30,220                 |
| 75       | 839752    | REMOVE GUARDRAIL  | LF              | \$ 15          | 200              | \$ 3,000                    | 200         | \$ 3,000                      | 0%           | 16.00                            | 3,200                | 7%                           | 193.00                    | 38,600     | 1187%       | 15.00          | 3,000      | 0%          | 200.00         | 40,000     | 1233%       | 21,200                 |
| 76       | 840516    | THERMOPLASTIC PAVEMENT MARKING (ENHANCED WET NIGHT VISIBILITY)              | SQFT            | \$ 20          | 1,700            | \$ 34,000                   | 1,700       | \$ 34,000                     | 0%           | 7.60                             | 12,920               | -62%                         | 7.40                      | 12,580     | -63%        | 8.30           | 14,110     | -59%        | 6.75           | 11,475     | -66%        | 12,771                 |
| 77       | 840615    | 6" THERMOPLASTIC TRAFFIC STRIPE (ENHANCED WET NIGHT VISIBILITY) (BROKEN 18- | LF              | \$ 1           | 14,000           | \$ 15,400                   | 14,000      | \$ 15,400                     | 0%           | 1.10                             | 15,400               | 0%                           | 1.10                      | 15,400     | 0%          | 1.23           | 17,220     | 12%         | 1.00           | 14,000     | -9%         | 15,505                 |
| 78       | 840621    | 6" THERMOPLASTIC TRAFFIC STRIPE (ENHANCED WET NIGHT VISIBILITY) (BROKEN 17- | LF              | \$ 1           | 2,020            | \$ 2,525                    | 2,020       | \$ 2,525                      | 0%           | 1.10                             | 2,222                | -12%                         | 1.10                      | 2,222      | -12%        | 1.23           | 2,485      | -2%         | 1.00           | 2,020      | -20%        | 2,237                  |
| 79       | 846007    | 6" THERMOPLASTIC TRAFFIC STRIPE (ENHANCED WET NIGHT VISIBILITY)             | LF              | \$ 1           | 15,300           | \$ 21,420                   | 15,300      | \$ 21,420                     | 0%           | 1.30                             | 19,890               | -7%                          | 1.30                      | 19,890     | -7%         | 1.48           | 22,644     | 6%          | 1.20           | 18,360     | -14%        | 20,196                 |
| 80       | 846009    | 8" THERMOPLASTIC TRAFFIC STRIPE (ENHANCED WET NIGHT VISIBILITY)             | LF              | \$ 2           | 2,270            | \$ 4,540                    | 2,270       | \$ 4,540                      | 0%           | 1.60                             | 3,632                | -20%                         | 1.60                      | 3,632      | -20%        | 1.85           | 4,200      | -8%         | 1.50           | 3,405      | -25%        | 3,717                  |
| 81       | 846013    | 12" THERMOPLASTIC TRAFFIC STRIPE (ENHANCED WET NIGHT VISIBILITY)            | LF              | \$ 4           | 2,100            | \$ 7,350                    | 2,100       | \$ 7,350                      | 0%           | 5.60                             | 11,760               | 60%                          | 5.50                      | 11,550     | 57%         | 6.15           | 12,915     | 76%         | 5.00           | 10,500     | 43%         | 11,681                 |



**INTERSTATE 15 SMART FREEWAY PILOT PROJECT - ENGINEERING ESTIMATE AND BIDDER'S PRICE**

Bid Opening Date: March 27, 2024 2:00 PM (PDT)

|               |                                  |              |
|---------------|----------------------------------|--------------|
| <b>Legend</b> | > \$100k below ENGR EST          | > Other Bids |
|               | > \$200k above Average Bid Price | < Other bids |
|               | > 50% of Engineering Estimate    |              |
|               | < -75% of Engineering Estimate   |              |

| ENGINEERING ESTIMATE |           |  |                 |                |                  |                             |             |                               |                      | LOW BIDDER<br>Beador Construction Company, Inc |             |                   | SECOND BIDDER<br>All American Asphalt |             |                   | THIRD BIDDER<br>Granite Construction Company |             |                   | FOURTH BIDDER<br>Coffman Specialties, Inc. |             |                   | AVERAGE OF<br>BID AMOUNTS |  |
|----------------------|-----------|--|-----------------|----------------|------------------|-----------------------------|-------------|-------------------------------|----------------------|--|-------------|-------------------|---------------------------------------|-------------|-------------------|--|-------------|-------------------|--|-------------|-------------------|---------------------------|--|
| ITEM NUM             | ITEM CODE | ITEM DESCRIPTION   | UNIT OF MEASURE | UNIT PRICE (A) | ENGR EST QTY (B) | ENGR EST AMOUNT (C = A x B) | BID QTY (D) | ADJUSTED ESTIMATE (E = A x D) | % OF ENGR EST        | PRICE (\$)                                     | AMOUNT (\$) | % VAR ENGR EST    | PRICE (\$)                            | AMOUNT (\$) | % VAR ENGR EST    | PRICE (\$)                                   | AMOUNT (\$) | % VAR ENGR EST    | PRICE (\$)                                 | AMOUNT (\$) | % VAR ENGR EST    |                           |  |
| 82                   | 846020    | REMOVE PAINTED TRAFFIC STRIPE  | LF              | \$ 1           | 26,600           | \$ 26,600                   | 26,600      | \$ 26,600                     | 0%                   | 0.40   | 10,640      | -60%              | 0.45                                  | 11,970      | -55%              | 0.49   | 13,034      | -51%              | 1.00                                       | 26,600      | 0%                | 15,561                    |  |
| 83                   | 846030    | REMOVE THERMOPLASTIC TRAFFIC STRIPE  | LF              | \$ 1           | 22,700           | \$ 11,350                   | 22,700      | \$ 11,350                     | 0%                   | 0.60   | 13,620      | 20%               | 0.65                                  | 14,755      | 30%               | 0.74   | 16,798      | 48%               | 1.00                                       | 22,700      | 100%              | 16,968                    |  |
| 84                   | 846035    | REMOVE THERMOPLASTIC PAVEMENT MARKING  | SQFT            | \$ 3           | 170              | \$ 510                      | 170         | \$ 510                        | 0%                   | 6.30   | 1,071       | 110%              | 5.50                                  | 935         | 83%               | 6.15   | 1,046       | 105%              | 5.00                                       | 850         | 67%               | 975                       |  |
| 85                   | 870510    | RAMP METERING SYSTEM   | LS              | \$ 243,503     | 1                | \$ 243,503                  | 1           | \$ 243,503                    | 2%                   | 535,000.00                                     | 535,000     | 120%              | 550,000.00                            | 550,000     | 126%              | 550,000.00                                   | 550,000     | 126%              | 500,000.00                                 | 500,000     | 105%              | 533,750                   |  |
| 86                   | 871300    | CAMERA SYSTEMS   | LS              | \$ 25,000      | 1                | \$ 25,000                   | 1           | \$ 25,000                     | 0%                   | 200,000.00                                     | 200,000     | 700%              | 200,000.00                            | 200,000     | 700%              | 198,000.00                                   | 198,000     | 692%              | 180,000.00                                 | 180,000     | 620%              | 194,500                   |  |
| 87                   | 871305    | A INFRA-RED TRAFFIC LOGGER - BY CONTRACTOR   | LS              | \$ 1,916,638   | 1                | \$ 1,916,638                | 1           | \$ 1,916,638                  | 16%                  | 2,300,000.00                                   | 2,300,000   | 20%               | 2,360,000.00                          | 2,360,000   | 23%               | 2,672,000.00                                 | 2,672,000   | 39%               | 2,150,000.00                               | 2,150,000   | 12%               | 2,370,500                 |  |
| 88                   | 871305    | A INFRA-RED TRAFFIC LOGGER - CONTROL SPECIALIST TO FURNISH   | LS              | \$ 607,520     | 1                | \$ 607,520                  | 1           | \$ 607,520                    | 5%                   | 599,692.00                                     | 599,692     | -1%               | 599,692.00                            | 599,692     | -1%               | 599,692.00                                   | 599,692     | -1%               | 599,692.00                                 | 599,692     | -1%               | 599,692                   |  |
| 89                   | 872134    | MODIFYING RAMP METERING SYSTEMS  | LS              | \$ 128,598     | 1                | \$ 128,598                  | 1           | \$ 128,598                    | 1%                   | 300,000.00                                     | 300,000     | 133%              | 320,000.00                            | 320,000     | 149%              | 320,000.90                                   | 320,001     | 149%              | 300,000.00                                 | 300,000     | 133%              | 310,000                   |  |
| 90                   | 999990    | MOBILIZATION (10%)   | LS              | \$ 854,153     | 1                | \$ 854,153                  | 1           | \$ 854,153                    | 7%                   | 1,280,000.00                                   | 1,280,000   | 50%               | 520,000.00                            | 520,000     | -39%              | 1,308,851.00                                 | 1,308,851   | 53%               | 1,363,986.50                               | 1,363,987   | 60%               | 1,118,209                 |  |
| 91                   |           | CONTROL SPECIALEST INSTALLATION COST   | LS              | \$ 403,500     | 1                | \$ 403,500                  | 1           | \$ 403,500                    | 3%                   | 403,500.00                                     | 403,500     | 0%                | 403,500.00                            | 403,500     | 0%                | 403,500.00                                   | 403,500     | 0%                | 403,500.00                                 | 403,500     | 0%                | 403,500                   |  |
| NA                   |           | ADDITIONAL BID CONTINGENCIES (MATERIAL COST & FABRICATION LEADTIME RISKS, ADJACENT PROJECTS COORDINATION RISKS, 1ST OF A KIND PROJECT) | LS              | \$ 1,981,936   | 1                | \$ 1,981,936                | 1           | \$ 1,981,936                  | 17%                  |  |             |                   |                                       |             |                   |  |             |                   |  |             |                   |                           |  |
| NA                   |           | SUPPLEMENTAL WORK ITEMS (MAINTENANCE DURING CONSTRUCTION, PRICE ADJUSTMENTS, ADDITIONAL COST ALLOWANCES)                               | LS              | \$ 514,000     | 1                | \$ 514,000                  | 1           | \$ 514,000                    | 4%                   |  |             |                   |                                       |             |                   |  |             |                   |  |             |                   |                           |  |
|                      |           |  |                 |                | <b>Total</b>     | <b>\$ 11,891,616</b>        |             |                               | <b>\$ 11,891,466</b> | <b>100%</b>                                    |             | <b>12,895,300</b> | <b>8.44%</b>                          |             | <b>13,121,693</b> | <b>10.35%</b>                                |             | <b>13,861,000</b> | <b>16.56%</b>                              |             | <b>13,965,000</b> | <b>17.44%</b>             |  |



## Bid Analysis Report

### INTERSTATE 15 SMART FREEWAY PILOT PROJECT

Four (4) sealed bids for the project were received and opened on March 27, 2024.

Our analysis follows Section 15.6, Contract Award, of the Caltrans Local Assistance Procedures Manual and utilizes the recommended bid analysis procedures in the FHWA document "Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation." Our review of each bid includes the following:

1. Assessing competition of bids received.
2. A checklist used to review bid documents for responsiveness.
3. A tabulation of bid items for each bidder that were compared to the Engineer's Estimate.
4. A review of Bid Items for unbalanced bids.
5. Contractor licenses for bidders and proposed subcontractors were researched on the Contractor's State License Board web site for validity.

#### **Competition Assessment:**

Results of the four (4) bids received indicate that the difference between the first and last bidders are 8.3%. The low percentage difference between the bids, indicate high competition and best price obtained for the SMART Freeway Project.

| Bidder                            | Bid Amount    | Variance from Engineering Estimate |        | Variance from Lower Bid |       |
|-----------------------------------|---------------|------------------------------------|--------|-------------------------|-------|
|                                   |               | Amount                             | %      | Amount                  | %     |
| Engineering Estimate              | \$ 11,891,466 |                                    |        |                         |       |
| Beador Construction Company, Inc. | \$ 12,895,300 | \$ 1,003,834                       | 8.44%  |                         |       |
| All American Asphalt              | \$ 13,121,693 | \$ 1,230,227                       | 10.35% | \$ 226,393              | 1.76% |
| Granite Construction Company      | \$ 13,861,000 | \$ 1,969,534                       | 16.56% | \$ 965,700              | 7.49% |
| Coffman Specialties, Inc.         | \$ 13,965,000 | \$ 2,073,534                       | 17.44% | \$ 1,069,700            | 8.30% |

#### **Bidder Responsiveness:**

Granite Construction Company (Granite) acknowledged addenda 1 & 2 and signed the bid letter. This bidder also provided all other forms required to be submitted as part of the bid package, including signatures by a notary public.

#### **Bid Item Tabulation and Unbalanced Bid Check**

- Granite used the estimated engineering quantities therefore there is no discrepancy in bids quantities. All cost variance are a direct result from the unit prices proposed by the Granite.
- Granite's bid items were analyzed and considered as potentially materially unbalanced if the bid items varied outside of a range of either less than -75% or greater than 50% of the bid items from the Engineer's Estimate. Granite's bid had forty-three (43) items that fell outside of this range.
- Granite's bid had a total of thirteen (13) bid items with a variance greater than (>\$100,000) the Engineer's Estimate. The total variance amount for these bid items is equal to \$4,362,640.40.

- Granite's bid had a total of seven (7) bid items with a variance greater than (>\$300,000) the Engineer's Estimate. The total amount of these bid items is equal to \$3,282,897.50.
- The seven (7) bid items with variance greater than (>\$300,000) compared to same items from other lower bidders and found that only one bid item from 2<sup>nd</sup> bidder is lower than engineering estimate

| ITEM NUM | ITEM DESCRIPTION                         | UOM  | ENGINEERING ESTIMATE | %OF ENGR EST | BEADOR    |           | AAA       | GRANITE |
|----------|--|------|----------------------|--------------|-----------|-----------|-----------|---------|
|          |  |      |                      |              | 1st A     | 2nd B     | 3rd C     |         |
| 33       | CLEARING AND GRUBBING (LS)               | LS   | \$ 30,000            | 0%           | 55,000    | 86,000    | 457,000   |         |
| 34       | ROADWAY EXCAVATION                       | CY   | \$ 311,460           | 3%           | 751,800   | 1,041,780 | 859,200   |         |
| 39       | HOT MIX ASPHALT (TYPE A)                 | TON  | \$ 1,285,200         | 11%          | 1,350,000 | 1,652,400 | 1,728,000 |         |
| 67       | VEGETATION CONTROL (MINOR CONCRETE)      | SQYD | \$ 305,200           | 3%           | 719,400   | 632,200   | 654,000   |         |
| 85       | RAMP METERING SYSTEM                     | LS   | \$ 243,503           | 2%           | 535,000   | 550,000   | 550,000   |         |
| 87       | INFRA-RED TRAFFIC LOGGER - BY CONTRACTOR | LS   | \$ 1,916,638         | 16%          | 2,300,000 | 2,360,000 | 2,672,000 |         |
| 90       | MOBILIZATION (10%)                       | LS   | \$ 854,153           | 7%           | 1,280,000 | 520,000   | 1,308,851 |         |
|          |  |      | \$ 4,946,154         | 100%         | 6,991,200 | 6,842,380 | 8,229,051 |         |

- Granite's bid had a total of two (2) bid items with a variance greater than (>\$500,000) the Engineer's Estimate. The total amount of these bid items is equal to \$1,303,102.50.
- The following summarizes the total variances between the Engineer's Estimate and Granite's bid. Note, the Engineer's Estimate is comprised of three separate elements; 1) Estimated unit rates for the individual bid items, 2) Additional non-bid item specific costs for additional contingencies/risk (such as adjacent project coordination risks, 1<sup>st</sup> of a kind project risks, material costs and lead-time risks), and 3) Additional non-bid item specific costs for supplemental work items (such as maintenance during construction and other additional cost allowances).

|                              | Engineers Estimate  | Granite's Bid       | Variance           |
|------------------------------|---------------------|---------------------|--------------------|
| Bid Items                    | \$9,395,530         | \$13,861,000        | \$4,465,470        |
| Additional Bid Contingencies | \$1,981,936         |                     |                    |
| Supplemental Work Items      | \$514,000           |                     |                    |
| <b>Total</b>                 | <b>\$11,891,466</b> | <b>\$13,861,000</b> | <b>\$1,969,534</b> |

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION**

\*\*\*\*\*

**CONTRACT**

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**CONSTRUCTION SERVICES FOR THE INTERSTATE 15 (I-15) SMART  
FREEWAY PILOT PROJECT**

**RCTC Agreement No. 24-31-067-00**

**February 22, 2024**

**BETWEEN  
RIVERSIDE COUNTY TRANSPORTATION COMMISSION**

**AND**

**(Add Contractor Name)**

DRAFT

**CONSTRUCTION SERVICES FOR THE INTERSTATE 15 (I-15) SMART FREEWAY  
PILOT PROJECT**

**RCTC AGREEMENT NO. 24-31-067-00**

**1. PARTIES AND DATE.**

This Contract is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the Riverside County Transportation Commission (hereinafter called the “Commission”) and (Add Contractor Name) (hereinafter called the “Contractor”). This Contract is for that Work described in the Contract Documents entitled CONSTRUCTION SERVICES FOR THE INTERSTATE 15 (I-15) SMART FREEWAY PILOT PROJECT.

**2. RECITALS.**

2.1 The Commission is a County Transportation Commission organized under the provisions of Sections 130000, et seq. of the Public Utilities Code of the State of California, with power to contract for services necessary to achieving its purpose;

2.2 Contractor, in response to a Notice Inviting Bids issued by Commission on February 22, 2024, has submitted a bid proposal for the CONSTRUCTION SERVICES FOR THE INTERSTATE 15 (I-15) SMART FREEWAY PILOT PROJECT;

2.3 Commission has duly opened and considered the Contractor’s bid proposal and duly awarded the bid to Contractor in accordance with the Notice Inviting Bids and other Bid Documents.

2.4 Contractor has obtained, and delivers concurrently herewith, Performance and Payment Bonds and evidences of insurance coverage as required by the Contract Documents.

**3. TERMS.**

**3.1 Incorporation of Documents.**

This Contract includes and hereby incorporates in full by reference this Contract and the following Contract Documents provided with the above referenced Notice Inviting Bids, including all exhibits, drawings, specifications and documents therein, and attachments thereto, all of which, including all addendum thereto, are by this reference incorporated herein and made a part of this Contract:

- a. NOTICE INVITING BIDS
- b. INSTRUCTIONS TO BIDDERS
- c. CONTRACT BID FORMS
- d. FORM OF CONTRACT
- e. PAYMENT AND PERFORMANCE BOND FORMS

- f. ESCROW AGREEMENT FOR SECURITY DEPOSITS
- g. CONTRACT APPENDIX
  - PART “A” - Regulatory Requirements and Permits
  - PART “B” - Special Provisions
  - PART “C” – Standard Provisions
  - PART “D” - Contract Drawings
  - PART “E” - Contract Compliance Provisions/DBE Requirements
  - PART “F” - Federal Minimum Wage Requirements
  - PART “G” - Federal Requirements for Federal Aid Construction Contracts
  - PART “H” – Supplemental Materials
- h. ADDENDUM NO.(S) (N/A or Add Addendum Numbers)

3.2 Contractor’s Basic Obligation.

Contractor promises and agrees, at his own cost and expense, to furnish to the Commission all labor, materials, tools, equipment, services, and incidental and customary work for the construction services for the I-15 SMART Freeway Pilot Project. The project is in Riverside County on Interstate 15 (I-15) northbound (NB) from the San Diego County line to north of Murrieta Hot Springs Road in the City of Temecula (PM R0-9.8) and on Interstate 215 NB from the 15/215 connector overcrossing to north of Murrieta Hot Springs Road in the City of Murrieta (PM R8.9-R9.9). The project will be implemented by the Riverside County Transportation Commission (RCTC), in cooperation with the California Department of Transportation (Caltrans) and the City of Temecula, as a demonstration (pilot) of a “Smart Freeway” system, patterned after the Managed Motorway system developed by the Victoria Department of Transport (VicDOT) in Australia. The project will install systems to collect real-time traffic data and operate active traffic management devices to reduce collisions, improve the flow of traffic, maximize the use of existing freeway capacity, and react to incidents that cause delay. Notwithstanding anything else in the Contract Documents, the Contractor shall complete the Work for a total of \_\_\_\_\_ (\$ \_\_\_\_\_), as specified in the bid proposal and pricing schedules submitted by the Contractor in response to the above referenced Notice Inviting Bids. Such amount shall be subject to adjustment in accordance with the applicable terms of this Contract. All Work shall be subject to, and performed in accordance with the above referenced Contract Documents.

### 3.3 Beginning of Work, Time of Completion and Liquidate Damages.

The Contractor shall begin work within 40 calendar days after the issuance of the Notice to Proceed. This Work shall be diligently prosecuted to completion before the expiration of (excluding plant establishment work) **158 working days** beginning on the fortieth calendar day after the date shown on the Notice to Proceed. Contractor agrees that if such Work is not completed within the aforementioned periods, liquidated damages will apply as provided by the applicable provisions of the Standard Provisions, found in Part “C” of the Contract Appendix.

### 3.4 Commission’s Basic Obligation.

Commission agrees to engage and does hereby engage Contractor as an independent contractor to furnish all materials and to perform all Work according to the terms and conditions herein contained for the sum set forth above. Except as otherwise provided in the Contract Documents, the Commission shall pay to Contractor, as full consideration for the satisfactory performance by the Contractor of services and obligation required by this Contract, the above referenced compensation in accordance with Compensation Provisions set forth in the Contract Documents.

### 3.5 California Prevailing Wages; Conflicts.

The State general prevailing wage rates determined by the Director of Industrial Relations are hereby made a part of this contract. It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid of said Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said bid conflicting herewith.

### 3.6 Contractor’s Labor Certification.

Contractor maintains that he is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Worker’s Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Work. A certification form for this purpose is attached to this Contract as Exhibit “A” and incorporated herein by reference, and shall be executed simultaneously with this Contract.

### 3.7 Successors.

The parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract. Contractor may not either voluntarily or by action of law, assign any obligation assumed by Contractor hereunder without the prior written consent of Commission.

### 3.8 Notices.

All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:



Contractor: Commission:  
(Contractor Name) Riverside County Transportation Commission  
(Contractor Address) P.O. Box 12008  
(Contractor City and Zip Code) Riverside, California 92502-2208  
Attn: (Contractor PM Name) Attn: Executive Director

Any notice so given shall be considered received by the other party three (3) days after deposit in the U.S. Mail, first class postage prepaid, addressed to the party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

CONTRACTOR  
(Contractor Name)

RIVERSIDE COUNTY TRANSPORTATION  
COMMISSION

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

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

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

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

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

Riverside County Transportation Commission

Tax I.D. Number: \_\_\_\_\_

APPROVED AS TO FORM:

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

Best Best & Krieger LLP  
Counsel, RCTC

DRAFT

EXHIBIT "A"

CERTIFICATION  
LABOR CODE - SECTION 1861

I, the undersigned Contractor, am aware of the provisions of Section 3700 et seq. of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code. I agree to and will comply with such provisions before commencing the Work governed by this Contract.

CONTRACTOR  
(Contractor Name)

By:

\_\_\_\_\_  
Signature

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

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

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

DRAFT

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION**

\*\*\*\*\*  
**PERFORMANCE BOND**  
\*\*\*\*\*

**CONSTRUCTION SERVICES FOR THE  
INTERSTATE 15 (I-15) SMART FREEWAY PILOT PROJECT**

**PROJECT RCTC Agreement No. 24-31-067-00**

**February 22, 2024**

DRAFT

**PERFORMANCE BOND**

WHEREAS the Riverside County Transportation Commission (also herein “Obligee”) has awarded to \_\_\_\_\_ (hereinafter “Contractor”), a contract for work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for **CONSTRUCTION SERVICES FOR THE INTERSTATE 15 (I-15) SMART FREEWAY PILOT PROJECT**

**RCTC AGREEMENT NO. 24-31-067-00**, and all other required services within the rights-of-way, easements and permits;

WHEREAS, the Work to be performed by the Contractor is more particularly set forth in that certain contract for the said Public Work dated \_\_\_\_\_ (hereinafter the “Public Work Contract”); and

WHEREAS, the Contractor is required by said Public Work Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof,

NOW, THEREFORE, we \_\_\_\_\_, the undersigned Contractor, as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the RIVERSIDE COUNTY TRANSPORTATION COMMISSION in the sum of \_\_\_\_\_ dollars, \$ \_\_\_\_\_, said sum being not less than 100% of the total amount payable by the said Obligee under the terms of the said Public Work Contract, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Public Work Contract and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill the one-year guarantee of all materials and workmanship; and indemnify and save harmless the Obligee, its officers and agents, as stipulated in the said Public Work Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Public Work Contract, unless otherwise provided for in the Public Work Contract, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by Obligee, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the Obligee from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the Obligee’s rights or the Contractor or Surety’s obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the Obligees to be, in default under the Public Work Contract, the Surety shall remedy the default pursuant to the Public Work Contract, or shall promptly, at the Obligees's option:

- i. Take over and complete the Project in accordance with all terms and conditions in the Public Work Contract; or
- ii. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Public Work Contract and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the Obligees, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the Obligees under the Contract and any modification thereto, less any amount previously paid by the Obligees to the Contractor and any other set offs pursuant to the Public Work Contract.
- iii. Permit the Obligees to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the Obligees under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Public Work Contract.

Surety expressly agrees that the Obligees may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the Obligees, when declaring the Contractor in default, notifies Surety of the Obligees's objection to Contractor's further participation in the completion of the Project.

The said Surety, for value received, hereby stipulates and agrees that no change, extensions of time, alteration or addition to the terms of the Public Work Contract or to the Work to be performed thereunder, or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work or to Specifications.

IN WITNESS WHEREOF, we have hereto set our hands and seals this day on \_\_\_\_\_, 20\_\_.

(Corporate Seal)

\_\_\_\_\_  
Contractor/Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By: \_\_\_\_\_  
Attorney-in-Fact

Signatures of those signing for the Principal and Surety must be notarized and evidence of corporate authority attached. An original Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

The rate of premium on this bond is \_\_\_\_\_ per thousand. The total amount of premium charged, \$ \_\_\_\_\_.

(The above must be filled in by corporate surety.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

\_\_\_\_\_  
\_\_\_\_\_

(Name and Address of Agent or Representative for service of process in California, if different from above)

(Telephone number of Surety and Agent or Representative for service of process in California)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA            )  
  ) ss.  
COUNTY OF                            )

On this \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said state, personally appeared \_\_\_\_\_, known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of the \_\_\_\_\_ (surety) and acknowledged to me that he subscribed the name of the \_\_\_\_\_ (surety) thereto and his own name as Attorney-in-Fact.

\_\_\_\_\_  
Notary Public in and for said State

(SEAL)

My Commission expires \_\_\_\_\_.

DRAFT

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ Secretary of the corporation named as principal to the within bond; that \_\_\_\_\_ who signed the said bond on behalf of the principal was then \_\_\_\_\_ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

DRAFT



**RIVERSIDE COUNTY TRANSPORTATION COMMISSION**

\*\*\*\*\*

**PAYMENT BOND**

\*\*\*\*\*

**CONSTRUCTION SERVICES FOR THE  
INTERSTATE 15 (I-15) SMART FREEWAY PILOT PROJECT**

**PROJECT RCTC Agreement No. 24-31-067-00**

**February 22, 2024**

**DRAFT**

## PAYMENT (MATERIAL & LABOR) BOND

WHEREAS the Riverside County Transportation Commission (hereinafter "Obligee") has awarded to \_\_\_\_\_ (hereinafter "Contractor"), a contract for work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the **CONSTRUCTION SERVICES FOR THE INTERSTATE 15 (I-15) SMART FREEWAY PILOT PROJECT**

**RCTC AGREEMENT NO. 24-31-067-00**, and all other required services within the right-of-way, easements and permits;

WHEREAS, the Work to be performed by the Contractor is more particularly set forth in that certain contract for the said Public Work dated \_\_\_\_\_, (hereinafter the "Public Work Contract"); and

WHEREAS, Principal is required to furnish a bond in connection with the contract described above; providing that if Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW, THEREFORE, we \_\_\_\_\_, the undersigned Contractor, as Principal and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the RIVERSIDE COUNTY TRANSPORTATION COMMISSION and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the said Public Work, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to said Public Work to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the said Contractor, the sum of \_\_\_\_\_ dollars, \$\_\_\_\_\_, said sum being not less than 100% of the total amount payable by said Obligee under the terms of the said Public Work Contract, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Work contracted to be done, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or

Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the Obligee in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

In addition to the provisions hereinabove, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to make claims under Section 9100 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Obligee and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereto set our hands and seals this day on \_\_\_\_\_, 20\_\_.

(Corporate Seal)

Principal/Contractor

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

Surety

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

Attorney-in-Fact

Signatures of those signing for the Principal and Surety must be notarized and evidence of corporate authority attached. An original Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

The rate of premium on this bond is \_\_\_\_\_ per thousand. The total amount of premium charged, \$ \_\_\_\_\_.

(The above must be filled in by corporate surety.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

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(Name and Address of Agent or Representative for service of process in California, if different from above)

(Telephone number of Surety and Agent or Representative for service of process in California)

DRAFT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA            )  
  ) ss.  
COUNTY OF                            )

On this \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said state, personally appeared \_\_\_\_\_, known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of the \_\_\_\_\_ (surety) and acknowledged to me that he subscribed the name of the \_\_\_\_\_ (surety) thereto and his own name as Attorney-in-Fact.

\_\_\_\_\_  
Notary Public in and for said State

(SEAL)

My Commission expires \_\_\_\_\_.

DRAFT

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ Secretary of the corporation named as principal to the attached bond; that \_\_\_\_\_ who signed the said bond on behalf of the principal was then \_\_\_\_\_ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

DRAFT

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION**

\*\*\*\*\*  
**ESCROW AGREEMENT**  
\*\*\*\*\*

**CONSTRUCTION SERVICES FOR THE  
INTERSTATE 15 (I-15) SMART FREEWAY PILOT PROJECT**

**PROJECT RCTC Agreement No. 24-31-067-00**

**February 22, 2024**

DRAFT

## ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between the Riverside County Transportation Commission whose address is 4080 Lemon Street, Third Floor, Riverside, California 92501 (hereinafter called "Owner") and \_\_\_\_\_ whose address is \_\_\_\_\_ hereinafter called "Contractor") and \_\_\_\_\_ whose address is \_\_\_\_\_ (hereinafter called "Escrow Agent").

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for \_\_\_\_\_ in the amount of \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of \_\_\_\_\_, and shall designate the Contractor as the beneficial Owner.

(2) The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the Owner makes payment of retention earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that the escrow created under this Escrow Agreement is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.



(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the Owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this Escrow Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:

On behalf of Contractor

\_\_\_\_\_

Title

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Signature

\_\_\_\_\_

Address

\_\_\_\_\_

Address

On behalf of Escrow Agent:

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Address

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Escrow Agreement.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement by their proper officers on the date first set forth above.

CONTRACTOR  
(Contractor Name)

RIVERSIDE COUNTY TRANSPORTATION  
COMMISSION

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

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

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

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

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

Riverside County Transportation Commission

DRAFT

# **AGENDA ITEM 10**



| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |  |
|---|--|
| <b>DATE:</b>                                      | September 11, 2024   |
| <b>TO:</b>  | Riverside County Transportation Commission   |
| <b>FROM:</b>                                      | Western Riverside County Programs and Projects Committee<br>Joie Edles Yanez, Capital Projects Manager<br>Erik Galloway, Project Delivery Director                         |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director   |
| <b>SUBJECT:</b>                                   | Agreements for WSP USA, Inc. for Intelligent Transportation System Operations Support and Transmax Software as a Service for the Interstate 15 SMART Freeway Pilot Project |

**WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE AND STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Award Agreement No. 23-031-034-00 to Transmax for Software as a Service (SaaS) for the Interstate 15 SMART Freeway Pilot Project (Project) for a two-year term, in the amount of \$3,100,961 plus a contingency of \$376,536 for a total amount not to exceed of \$3,477,497;
- 2) Award Agreement No. 23-31-044-00 to WSP USA, Inc. (WSP) for Intelligent Transportation System (ITS) Operations support for the Project for a three-year term, in the amount of \$1,506,914 plus a contingency amount of \$150,691 for a total amount not to exceed \$1,657,605;
- 3) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements on behalf of the Commission;
- 4) Authorize the Executive Director, or designee, to approve contingency work as may be required for the Project; and
- 5) 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:**

At the Annual Commission Workshop held on January 31, 2020, a presentation was provided about technology-based traffic management strategies, referred to as “SMART Freeways”. This meeting launched a feasibility study for a pilot project along the Interstate 15 (I-15) from the San Diego County line to Winchester Road in Temecula. The proposed pilot project would control traffic using a software called STREAMS, developed by an Australian company called Transmax.

Subsequently on September 28, 2020, Interstate 15 Corridor Ad Hoc Committee received an update on the project status which outlined the framework for the next steps after completion of the feasibility study.

At its May 12, 2021, Commission meeting, the Commission awarded Agreement No. 21-31-063-00 to WSP, to provide professional services for preliminary engineering, environmental documents, final design, construction support, and operation support services for the Project. In addition, the Committee approved Agreement No. 21-31-059-00 with Caltrans to obtain State Highway Operation and Protection Program (SHOPP) Minor Funds contribution of \$1.2 million towards the Project's construction.

At its November 9, 2022, Commission meeting, the Commission approved the award of Agreement No. 22-31-098-00 to Anser Advisory for construction management services, materials testing, and construction surveying for the Project, in the amount of \$2,072,210, plus a contingency amount of \$207,221, for a total amount not to exceed \$2,279,431

At its September 13, 2023, Commission meeting, the Commission approved the award of Agreement No. 23-031-035-00 to Transmax Pty Ltd (Transmax) for comprehensive professional services for the Project, in the amount of \$1,889,038 plus a contingency amount of \$283,356 for a total amount not to exceed \$2,172,394.

At its September 13, 2023, Commission meeting, the Commission approved award of Agreement No. 23-031-034-00 to Transmax for SaaS for the Project in the amount \$2,510,237, plus a contingency amount of \$376,536 for a total amount not to exceed \$2,886,773. This agreement was not executed due to changes in the scope covered by the agreement, and it is the subject of this current agenda item.

### **Project Scope**

The scope of the Project is to add active traffic management strategies to the northbound direction of I-15 from the San Diego County line to Winchester Road in the city of Temecula. The integrated traffic management system was developed by the Victoria Department of Transport (VDOT) and implemented by Transmax in Australia and will be a first-of-kind approach in California. The system has been extensively used in Melbourne's Managed Motorway system and extends over 100 miles of freeway. The system and software to be utilized have been piloted in the United States between 2021 to 2022 on I-25 in Colorado as part of Colorado Department of Transportation (CDOT) SMART 25 project. In addition, Contra Costa Transportation Authority (CCTA) is developing a similar project on the I-680 called the Innovate 680 program. CCTA's program will utilize STREAMs software as well as other ITS Systems and elements utilized in Melbourne's Managed Motorway system.

The Project to be implemented on I-15 will include the following elements:

- Improvements to the northbound entrance ramps at Temecula Parkway and Rancho California Road, including pavement widening, barriers, and miscellaneous civil improvements;
- Installation of an Intelligent Transportation System, which includes enhanced traffic detection devices consisting of traditional loop detectors, TIRTLs (The Infra-Red Traffic Logger) and Coordinated Adaptive Ramp Metering (CARM) at northbound Temecula Parkway, Rancho California Road, and Winchester Parkway (ITS improvements); and
- Implementation of the STREAMS software platform provided by Transmax to monitor and operate the CARM system during the two-year pilot period.

This pilot Project will construct the improvements and operate the system for two years. Regular monitoring reports will be prepared during the operations phase and presented to the Commission and Caltrans. The reports will compare the performance of the system to established criteria. The criteria that will be used in this assessment include travel time and savings, average speeds, traffic flow during peak periods, decrease in congestion time, ramp meter queue length and duration. At the end of the pilot period, the Commission, in partnership with Caltrans, will assess the data and reports to decide whether to continue operating the system after the pilot period.

During the pilot period, discussions will be held with Caltrans to identify funding and the necessary agreements to allow for the continued operation of the SMART freeway system if the results are positive and it is determined to continue the systems operation under Caltrans management.

### **Project Status**

After the September 13, 2023, Commission meeting, RCTC staff and the consultant team commenced development of the environmental and design documents for the project. The project received final Caltrans approval on September 29, 2023, with an advertisement for construction issued in January 2024.

During project planning it was noted that the French Valley Parkway Project Phase II (FVPW) improvements would fall within the Project's footprint. The FVPW project has since been awarded and commenced construction. The Project team has coordinated the Project design with the FVPW team. As part of this coordination, it was determined that a modified design was necessary to address construction staging and modifications to the north bound I-15 by the FVPW project. This modified design for the Project was necessary to ensure the SMART freeway system could remain in operation during construction of the FVPW project. The modified design was developed by WSP and coordinated with the city of Temecula to be incorporated as part of the FVPW project.

In addition, two Caltrans Auxiliary Lane Projects were identified within the Project's footprint. One sponsored by the city of Temecula and the other by Caltrans. The City's project is actively under construction and anticipated to be completed prior to the Project's 2-year pilot period.

The Caltrans auxiliary lane project is anticipated to be in construction by late 2024, with construction anticipated to be completed prior to or during the Project’s 2-year pilot period. The Project’s design team has been in coordination with Caltrans to ensure the auxiliary lane projects incorporate the Project’s design and do not impede the systems operation during the pilot period.

On December 22, 2023, the commission advertised Invitation for Bids (IFB) No. 24-31-054-00 for the construction of the Civil and ITS elements. This is the subject of a separate agenda item being presented to detail the construction bids and recommendation for the award of that contract at its September Commission meeting.

As previously presented, the Commission will be required to enter into multiple agreements for this Project. Additional agreements have been identified and included in the table below. In addition, the table summarizes changes in the costs of the agreements based on the issues encountered during the environmental and design phases, and agreement negotiations.

**Required Agreements**

| Party   | Scope   | Amount Estimated (2021)                | Amount (2024)   | When (Commission meeting)    |
|---|---|--|---|------------------------------|
| WSP   | Preliminary engineering, environmental, final design, construction support, and operation support | \$4,000,000                            | \$4,000,000   | Completed (May 12, 2021)     |
|   | Amendment No.2 - Final Design, construction support, and operations support                       | N/A                                    | \$800,000   | November 8, 2023             |
| Caltrans  | Financial contribution to the project   | (\$1,200,000)                          | (\$1,200,000)   | Completed (May 12, 2021)     |
|   | Operations and maintenance  | No cost                                | No cost   | November 8, 2023             |
| Transmax  | Software license, configuration and support   | \$2,950,000                            | Replaced with Two Agreements Below                      |                              |
|   | comprehensive Profession Services - Implementation agreement                                      |  | \$1,889,038+\$283,356 (contingency) = \$2,172,394       | September 13, 2023           |
|   | SaaS (Software License and Support)   |  | \$3,100,961+\$376,536(contingency) = \$3,477,497        | September 11, 2024           |
| WSP   | ITS System operator   | Anticipated to be included in Transmax | \$1,506,914 + \$150,691 (contingency) = \$1,657,605     | September 11, 2024           |
| Contractor  | Civil/ITS Construction  | \$3,440,000                            | \$13,861,000 + \$1,940,540 (contingency) = \$15,801,540 | September 11, 2024           |
| Contractor  | Civil/ITS Maintenance   | \$5,250,000                            | \$1,500,000 (estimated)                                 | January 8, 2025              |
| Anser Advisory                                    | Construction Management   | \$1,630,000                            | \$2,072,210+ \$207,221 (contingency) = \$2,279,431      | Completed (November 9, 2022) |
| <b>Total Net Cost after Caltrans Contribution</b> |   | <b>\$16,070,000</b>                    | <b>\$30,488,467</b>                                     |                              |

As previously presented at its September 2023 Commission Meeting, the total Project cost has increased due to various issues encountered over the past two years. The initial cost estimate from 2021 was based on a feasibility study. Some of the key factors contributing to the cost increase include design modifications for FVPW project improvements, coordination with Caltrans for Auxiliary Lane Projects, unforeseen design efforts, negotiations with the ITS software



consultant Transmax, updated software license costs, lessons learned from the CDOT SMART-25 project, and inflation in construction and materials costs. Additionally, the operations and maintenance agreement with Caltrans has uncovered potential issues that have required an increase in contingency due to this being a non-standard project.

### **DISCUSSION:**

#### **Transmax Agreements**

Transmax is the developer of the software, STREAMS, which will control, monitor, and adjust the CARM system. Transmax is a government-owned entity, ownership is held by Queensland Department of Transport and Main Roads who developed and own the STREAMS ITS platform. The two agreements that are required for implementation of the STREAMS software are the following:

- Comprehensive Professional Service Agreement (Awarded and Executed)
- SaaS (Software as a Service), Software License Agreement

The comprehensive professional service agreement, awarded by the Commission on September 13, 2023, covers the system design and implementation, configuration of the STREAMS software to be compatible with the project design, development of custom software drivers for the ITS devices used by Caltrans, commissioning of the ITS system and support, supply of the field processors to integrate the ITS devices, algorithm tuning, and user training. These elements must be implemented before and during system construction and operations during the pilot period.

The SaaS software license agreement for the 2-year pilot period covers the use and maintenance of STREAMS software, with an annual fee that is a fixed cost regardless of project size. Seven months after Caltrans's approval of the Concept of Operation, the Commission awarded the SaaS license agreement on September 13, 2023. Following the Commission's award of the SaaS license agreement, RCTC continued coordination for access to the Virtual Private Network (VPN) required to access the Caltrans network needed for Transmax's to access the network from outside of the United States. The VPN access to the Caltrans CCTV cameras is a requirement for the system to function as it provides visual confirmation of road conditions and verifies the ITS devices are functioning. It was revealed through our coordination efforts that access to the State and specifically the Caltrans computer network could not be achieved from out-of-country locations due to cyber security controls and requirements. This has resulted in a change in how Transmax intended to monitor, operate, and adjust the algorithm and system. Consequently, it requires Transmax to add in-country support via a subconsultant to provide the SaaS. The in-country support solution was the result of open and solutions-based partnership and negotiation between Caltrans, RCTC, and Transmax. The in-country support prior to the pilot program, will access the Caltrans network and perform system integration, assemble field equipment, provide software use training, and during the pilot program monitor the day-to-day functions of field devices and software. This support ensures seamless operation and readiness during the pilot phase. Due to these developments, it has resulted in an increase of the SaaS agreement cost

from what was presented to the Commission in September 2023. The SaaS agreement was not executed due to these issues and the scope has been revised and updated to reflect the latest conditions. This has resulted in a cost increase and this request seeks the Commission's approval to award the Transmax SaaS agreement for \$3,100,961, plus a contingency of \$376,536, for a total not to exceed \$3,477,497. This approval will supersede the previous approval issued at the September 2023 Commission Meeting. This results in an increase of the SaaS agreement of \$590,724 from 2023 to 2024.

### **ITS Operations Support Agreement**

The ITS Operations Support scope includes overseeing the CARM system and monitoring ITS devices to ensure continuous operation. This involves system dashboard monitoring, software functionality checks, identifying and diagnosing malfunctions, and coordinating with the Construction Manager and ITS maintenance contractor for repairs. The ITS Operations support team is responsible for ensuring the CARM system is functioning as designed 24 hours a day / 7 days a week.

### **Procurement Process – ITS Operations Support**

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-based method of selection for the procurement. Evaluation criteria included elements such as firm experience, quality and experience of key team personnel, ITS support organization and staffing, project understanding and approach, and the ability to respond to the requirements set forth under the terms of a request for qualifications (RFQ).

RFQ No. 24-31-044-00 for I-15 Smart Freeway – Intelligent Transportation System (ITS) Operations Support was released by staff on January 8, 2024. The RFQ was posted on the Commission's Planet Bids website, which is accessible through the Commission's website. Through Planet Bids, 61 firms downloaded the RFQ; eight (8) of these firms are located in Riverside County. A pre-submittal meeting was held on January 18, 2024, and was attended by six (6) firms. Staff responded to all questions submitted by potential proposers prior to the January 25, 2024, clarification deadline. Two firms – TKE Engineering (Riverside) and WSP (San Bernardino) – submitted responsive and responsible statements of qualifications prior to the 2:00 p.m. submittal deadline on February 15, 2024. Based on the evaluation criteria set forth in the RFQ, the firms were evaluated and scored by an evaluation committee comprised of Commission, Caltrans, and Bechtel 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 recommends contract award to WSP for I-15 Smart Freeway – ITS Operations Support, as this firm earned the highest total evaluation score.

Subsequently, staff negotiated the scope of services (including the appropriate level of effort, labor categories, etc.), schedule, and cost with WSP for I-15 Smart Freeway – ITS Operations Support and established a fair and reasonable price. As part of the procurement process for architectural and engineering services, the contract is subject to a pre-award audit. The proposed cost is \$ 1,506,914 and may change slightly as a result of the pre-award audit. Staff recommends award of Agreement No. 23-31-044-00 for I-15 Smart Freeway – ITS Operations Support in the amount of \$1,506,914, plus a contingency amount of \$150,691, for a total amount not to exceed \$1,657,605. 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.

**FISCAL IMPACT:**


The project is federally funded with Congestion Mitigation and Air Quality (CMAQ) funds. The ITS Operations Support will be funded with CMAQ funds.

**Funding Source Breakdown**

|   | Item  | Previously Awarded | Requested          | Total              | Fund Source |
|---|---|--------------------|--------------------|--------------------|-------------|
| 1 | Transmax - SaaS (Software as a Service), Software License Agreement | \$2,886,773        | \$590,724          | \$3,477,497        | CMAQ        |
| 2 | WSP – ITS Operations Support  | \$0                | \$1,657,605        | \$1,657,605        | CMAQ        |
|   | <b>Total</b>  | <b>\$2,886,773</b> | <b>\$2,248,329</b> | <b>\$5,135,102</b> | <b>CMAQ</b> |

**Expenditure Schedule**

|   | Item  | FY 2024/25       | FY 2025/26+        | Total              | GL/Project Accounting No.                    |
|---|---|------------------|--------------------|--------------------|--|
| 1 | Transmax - SaaS (Software as a Service), Software License Agreement | \$0              | \$3,477,497        | \$3,477,497        | 003051 73001<br>00000 0000 / 261<br>31 73001 |
| 2 | WSP – ITS Operations Support  | \$100,000        | \$1,557,605        | \$1,657,605        | 003051 81016<br>00000 0000 / 261<br>31 81002 |
|   | <b>Total</b>  | <b>\$100,000</b> | <b>\$5,035,102</b> | <b>\$5,135,102</b> |  |

| Financial Information       |  |       |                           |                    |                          |
|-----------------------------|--|-------|---------------------------|--------------------|--------------------------|
| In Fiscal Year Budget:      | Yes  | Year: | FY 2024/25<br>FY 2025/26+ | Amount:            | \$100,000<br>\$5,035,102 |
| Source of Funds:            | CMAQ   |       |                           | Budget Adjustment: | No                       |
| GL/Project Accounting No.:  | 003051 73001 00000 0000 / 261 31 73001<br>003051 81016 00000 0000 / 261 31 81002   |       |                           |                    |                          |
| Fiscal Procedures Approved: |  |       |                           | Date:              | 08/29/2024               |

Attachments:

- 1) Transmax SaaS Draft Agreement No. 23-031-034-00
- 2) WSP ITS Operations Support Draft Agreement No. 23-31-044-00

|  |   |          |   |     |   |
|--|---|----------|---|-----|---|
| <i>Approved by the Western Riverside County Programs and Projects Committee on<br/>August 26, 2024</i> |   |          |   |     |   |
| In Favor:  | 7 | Abstain: | 1 | No: | 1 |

**Agreement No. 23-01-034-00**

**SaaS AGREEMENT  
FOR I-15 SMART FREEWAY PILOT PROJECT**

**TRANSMAX  
&  
RIVERSIDE COUNTY TRANSPORTATION COMMISSION**

**DRAFT**

## SaaS AGREEMENT

### FOR I-15 SMART FREEWAY PILOT PROJECT

THIS Software as a Service (SaaS) AGREEMENT ("Agreement") is made as of November 1, 2023.

#### BETWEEN:

**Riverside County Transportation Commission** of 4080 Lemon Street, 3rd Floor Riverside, CA 92501, United States

("Customer")

#### AND

**Transmax Pty Ltd** (ABN 59 099 487 573) Level 5, 143 Coronation Drive, Milton, Queensland 4064, Australia ("Transmax")

The parties agree as follows:

## 1 OVERVIEW

### 1.1 Summary

- (a) This Agreement sets out the terms and conditions that govern the Customers access to and use of the Software.
- (b) This Agreement also sets out the Service Levels that apply to the availability and performance of the Software.
- (c) Transmax agrees to provide the access to Software to the Customer for the Term so that the Customer can use the Software during the Term, in accordance with this Agreement.
- (d) This Agreement does not cover professional services, such as installation, configuration or training services. Transmax may agree to provide such services to the Customer in accordance with that certain Transmax Comprehensive Professional Services Agreement entered into between the parties.
- (e) This Agreement is initially for Customer's I-15 Smart Freeway Pilot Project and can be continued after the trial or expanded to cover other freeways as agreed by the parties.

### 1.2 The Agreement

- (a) This Agreement includes these standard terms and the details set out in the Schedules.

### 1.3 Precedence

- (a) In the event of any inconsistency between the main body of this Agreement and the Schedules, the main body will prevail.

## 2 TERM

- (a) This Agreement commences on the Commencement Date and continues until the expiry of the Initial Term, unless terminated earlier in accordance with clause 10 or renewed under clause 2(b).

- (b) Prior to the expiry of the Initial Term, or any subsequent renewal term, the Customer will have the option to extend the Agreement by providing Transmax with no less than 90 days' written notice prior to the expiry of the Initial Term or then current renewal term, as the case may be.
- (c) The Customer shall have the right, in its sole discretion, to novate this Agreement to the California Department of Transportation ("**Caltrans**"). The terms and pricing until 31 December 2026 shall remain the same, provided that, in the event that Transmax is required to undertake additional work because of the novation or to comply with Caltrans' policies and procedures, Transmax can reprice as part of the novation process. Transmax may increase prices by no more than 10% a year after 31 December 2026.

### **3 THE SOFTWARE**

#### **3.1 Provision of license and access to the Software**

- (a) Subject to the terms and conditions of this Agreement, Transmax hereby grants to Customer a renewable, non-exclusive, non-transferable (except as otherwise specified herein) right and license for Customer and its End Users, as defined below, to access and use the Software, including any Third Party Products, as defined below, during the Term. This license does not require Transmax to provide the Customer or its End Users access to or a copy of the source code for the Software. The Customer may allow Caltrans to access the product dashboard for the Software as used by the Customer.
- (b) To access and successfully use the Software, the Customer must use a fast Internet connection and browser software that meets the requirements set out in the Product Description. The Customer must also establish and maintain a network connection incorporating redundancy between Transmax's managed service environment and the Customer's ITS field network.
- (c) Transmax will use reasonable commercial endeavours to provide access to the Software on a "24 hours 7 days a week" basis, subject to scheduled downtime and service interruptions. The Service Levels specify the Customer's rights and Transmax's obligations in respect of service interruptions caused by Transmax.
- (d) Transmax will provide access to the Software in a professional manner and in accordance with good industry practice.
- (e) In providing access to the Software, Transmax will comply with all relevant Laws that are applicable to Transmax.
- (f) The production instance of the Software will be hosted in the United States.
- (g) Transmax's technical personnel are in Australia. The Customer acknowledges that Transmax may access the Software remotely from Australia.
- (h) Transmax reserves the right to discontinue access to the Software at the end of the Term unless this Agreement is replaced by a new agreement providing rights of access to and use of the Software.

#### **Functionality**

- (i) As at the Commencement Date, the Software will have the functionality as set out in the Product Description.
- (j) Transmax may change functionality of the Software from time to time, provided that such changes do not reduce or eliminate the functionality existing as of the Commencement Date. Unless an

urgent change is needed. Transmax will endeavour to give the Client 90 days' notice of any such change. If the change reduces or eliminates functionality, in addition to any other rights or remedies the Customer may have under this Agreement, the Fee shall be reduced to reflect the value of the reduced or eliminated functionality. If applicable, Transmax shall remit a refund to Customer of any such portion of the Fee paid in advance by Customer.

- (k) Transmax may make available enhancements or updates to the Software, but is under no obligation to do so, unless such enhancements or updates are necessary to ensure the functionality of the Software as described in this Agreement, in which case Transmax shall make the enhancement or updates available to Customer. Any bug fixes, enhancements and updates as determined by Transmax, and necessary enhancements and updates to maintain the functionality of the Software, as described in this Agreement shall be provided to Customer at no additional cost. If Customer requires custom enhancements to the Software, Customer may engage Transmax to create such enhancements pursuant to the Transmax Comprehensive Professional Services Agreement.
- (l) Where Transmax chooses or is required to make available any patches, updates, enhancements, add-ons or hot-fixes to the Software, this Agreement also applies to these changes unless they are accompanied by separate terms that are agreed to by the Customer.
- (m) Subject to paragraph (b) above, Transmax reserves the right to discontinue any functionality of the Software in respect of security or intellectual property issue or to comply with Law.
- (n) In order to provide the Software, Transmax may use data and software from external sources ("Third Party Products"). The Customer agrees to comply with the legal or contractual requirements in respect of the Third-Party Products. Any breach of these requirements will be deemed to be a breach of this Agreement. The requirements for Third Party Products are accessible through the customers user interfaces and may be amended by Transmax from time to time. Transmax may alter or cease providing some or all of the Third-Party Products at any time without prior notice to the Customer, provided that such actions do not reduce the functionality of the Software. Transmax will provide support to Customer for any issues concerning the functioning of any Third-Party Products.

### **3.2 Documentation**

- (a) Transmax will provide the Documentation to the Customer.
- (b) The Documentation will be in English, and will be understandable by a typical end user.
- (c) Transmax will periodically update the Documentation so that it accurately relates to the Software.

### **3.3 Cooperation**

- (a) Transmax will act in a professional and cooperative manner when dealing with the Customer.
- (b) The parties will always act reasonably and in good faith when dealing with each other.
- (c) If Transmax is required by the Customer to work with other suppliers or contractors of the Customer, Transmax will act cooperatively and in a friendly and professional manner when doing so.
- (d) If Transmax attends the Customer's premises or sites, Transmax must comply with the Customer's relevant policies and directions known or made known to Transmax.
- (e) Where a party is required to review or approve a document or other item, the reviewing party must do so promptly, within in 10-working days, and if required must provide detailed and considered feedback to the other party.
- (f) The Customer agrees to prepare for and attend scheduled or agreed meetings, and actively participate in such meetings as required. The Customer's Personnel who attend such meetings



must be knowledgeable about the issues relevant to the Customer that are agenda items for such meetings.

- (g) The parties shall meet at regular intervals, at a minimum monthly or quarterly, as agreed or requested by the Customer to review the Customer's use of the Software and to obtain the Customer's feedback. These meetings may take place using electronic conferencing technology.

### **3.4 Transmax's Responsibilities**

- (a) To support the Software, Transmax will be responsible for the following:
  - (i) System monitoring of the Software;
  - (ii) Provision of technical advice and support to the Customer that is related to the Software;
  - (iii) Updating the Software;
  - (iv) Provision of third-party system monitoring required for the Software;
  - (v) Customer issue investigation and support in line with agreed services levels in the Product Description for the Software; and
  - (vi) Customer change request management in line with agreed services levels in the Product Description for the Software.
  - (vii) Coordination with the Customer's Intelligent Transportation System (ITS) operator as set out in Schedule 2.

## **4 THE CUSTOMER'S RESPONSIBILITIES**

### **4.1 Accounts**

- (a) To access the Software, the Customer must establish one or more user accounts, each with a user name and password. The Customer may only establish user accounts for its employees, Caltrans, contractors and consultants ("End Users"). The Customer must not establish accounts for people who are not its employees, contractors or consultants.
- (b) Each of the Customer's End Users must have their own user account and must not allow others to access the Software via that End User's user account. User accounts, access credentials and passwords must not be shared.
- (c) The Customer must ensure that user names, access credentials and passwords for its End Users are kept confidential and secure.
- (d) The Customer is responsible for all use and activities that occur under the user accounts of the Customer's End Users, regardless of whether such use and activities are authorized by the Customer.
- (e) Transmax is not responsible for unauthorized access to the Customer's account, unless such unauthorized access is the result of Transmax's failure to comply with its security obligations as set forth in Section 12(a) of this Agreement.
- (f) The Customer is responsible for End Users' use of the Software.
- (g) The Customer must ensure that all End Users comply with the Customer's obligations under this Agreement. Transmax may require that each End User agree with legal terms that are not inconsistent with this Agreement before using the Software.

- (h) If the Customer becomes aware of any violation of the Customer's obligations under this Agreement caused by an End User, the Customer will immediately suspend access to the Software by such End User and inform Transmax.
- (i) The Customer must nominate a single Customer Representative that will be the primary point of contact for Transmax and who is authorised to make decisions on behalf of the Customer in relation to the Software. The initial Customer Representative is set out in Schedule 1.

#### **4.2 Content, Data and Configurations**

- (a) Transmax will pre-configure the Software for the Customer so that the Software operates in accordance with Schedule 2.
- (b) The Customer is responsible for all content, data and configurations that are set or input by the Customer into the Software. The Customer is responsible for the development, maintenance, accuracy and use of such content, data and configurations.
- (c) The Customer must ensure that all content, data and configurations set or input by the Customer into the Software do not violate any laws, will not adversely impact the operation of the Software and will not impact other users of the Software.

#### **4.3 Customer's Security and Backup**

- (a) The Customer is responsible for taking appropriate action to secure, protect and backup the Customer's accounts used to access the Software in a manner that will provide appropriate security and protection.

#### **4.4 Customer's Own Use**

- (a) The Customer may only use the Software and the Documentation for the Software (i.e., the product documentation) for the Customer's own use. This clause does not govern how the Customer may use the Customer's data, the output of the Software and KPI data.
- (b) The Customer may only use the Software for the purpose for which the Software is designed.
- (c) The Customer must not resell the Software, must not use the Software to provide services to others and must not use the Software to operate a service bureau.
- (d) The Customer must not copy or attempt to copy any Software code.

#### **4.5 Field Network**

- (a) The Customer is responsible for provisioning and maintaining:
  - (i) ITS field equipment that connects to the Software; and
  - (ii) network connectivity between ITS field equipment, any edge devices with components of the Software installed, the ITS Network, and the Software itself.
- (b) Where specified in Schedule 2 that Transmax supplies the Customer with equipment that includes part of the Software embedded in the equipment, Transmax grants to the Customer a perpetual license to use that Software in the equipment supplied. The equipment may include functionality to allow the remote updating of the Software. If the parties agree, Transmax may update the Software on such equipment remotely.

#### **4.6 Support**

- (a) The Customer must provide a means for Transmax's support Personnel to determine whether the Software is available when resolving incidents.

- (b) If reasonably requested by Transmax, where the Customer raises a support incident, the Customer must assist Transmax's support Personnel with troubleshooting activities.
- (c) The Customer must keep Transmax informed of relevant changes to the Customer's infrastructure and organisation that may impact the operation of the Software.

## **5 INTELLECTUAL PROPERTY**

### **5.1 General**

- (a) No Intellectual Property Rights are transferred or assigned from one party to the other by virtue of this Agreement.

### **5.2 Customer Intellectual Property**

- (a) The Customer owns all Intellectual Property Rights in all content, data and configurations that are set or input by the Customer into the Software.
- (b) The Customer hereby grants to Transmax a non-transferrable, personal, royalty-free license to Transmax for the Term to use and copy content, data and configurations that are set or input by the Customer into the Software to enable the Customer's operations of the Software and for Transmax's internal research, development, testing and product improvement purposes.
- (c) Transmax has no right to use the Customer's trademarks or brands unless explicitly provided for in a separate trademark licence agreement.
- (d) With Customer's prior written consent, Transmax may identify the Customer as a customer of Transmax including in marketing and promotional materials. In bids for new work, Transmax may use the Customer as a reference site but will inform the Customer and obtain the Customer's prior written consent before to doing so.

### **5.3 Transmax Intellectual Property**

- (a) Transmax owns all Intellectual Property Rights in the Software and Documentation. This includes Intellectual Property Rights in any reports, computer code, interfaces, methodologies, know-how, artwork, logos and branding and the look & feel of or relating to the Software.
- (b) Transmax hereby grants to the Customer a non-transferrable, personal, non-sublicensable, royalty-free license for the Term to use and copy the Documentation for the Customer's operations of the Software.

### **5.4 Non-infringement by Transmax**

- (a) Transmax will not infringe any Intellectual Property Rights when providing the Software or in creating the Documentation.
- (b) Transmax warrants that the Customer's use of the Software will not infringe any Intellectual Property Rights in the United States.
- (c) Transmax indemnifies the Customer against any liability (including liability for reasonable legal costs) based on a claim that use of the Software by the Customer and the Customer's End Users in the United States in accordance with this Agreement is an infringement of the Intellectual Property Rights of any third person.
- (d) As a condition of reimbursement under the indemnity in paragraph (c) above, the Customer must notify Transmax of a claim as soon as practical, keep Transmax informed of all material aspects of the claim of which the Customer is aware, and follow all reasonable directions of Transmax relating

to the claim. The Customer must not settle or compromise the claim, or take any steps in relation to the claim that may prejudice Transmax in any way without Transmax's prior consent. The Customer must, at Transmax's cost, provide all cooperation and assistance reasonably requested by Transmax in defending or otherwise addressing any claim. If Transmax requests, Transmax will conduct the defence of the claim at Transmax's expense.

- (e) If a party becomes aware that the Software or Documentation are, or are threatened to become subject to any injunction, or are determined to be infringing of any rights, that party must notify the other party. If so, Transmax has the option to (I) procure for the Customer the right to continue use of the Software or Documentation (or any portion thereof) as contemplated under this Agreement or (II) replace or modify the Software or Documentation (or any portion thereof) such that they are non-infringing, provided that the replacement or modification is equivalent in function and meets the requirements and specifications of this Agreement to the Customer's satisfaction. If (I) or (II) are not available to Transmax, Transmax has the right to terminate this Agreement, or require the Customer to cease use of the relevant Software or Documentation. When the Customer so complies, the Customer will not be liable to make further payments to Transmax directly relating to use of such Software or Documentation.

## **5.5 Infringement By Customer**

- (a) The Customer must not infringe any Intellectual Property Rights in the way the Customer uses the Software or in inputting or setting any content, data or configurations into the Software.

## **5.6 Improvements to the Software and Documentation**

- (a) If Customer provides or discloses ideas, concepts, improvements or knowhow to Transmax relating to the Software or Documentation, then notwithstanding the foregoing, Transmax will own all such ideas, concepts, improvements and knowhow, and the Customer hereby assigns all Intellectual Property Rights therein to Transmax.

## **6 FEES, PAYMENT AND TAXES**

### **6.1 Fees and Payment**

- (a) The Customer must pay the Fees set out in each invoice within 45 days of receipt, in accordance with this clause 6.
- (b) The total amount to be paid by Customer under this Agreement for the Initial Term shall not exceed \$2,510,237, unless approved in writing by Customer's Executive Director.
- (c) The Fees must be paid by the Customer to Transmax in U.S. dollars, by electronic bank transfer or wire transfer into Transmax's Australian bank account in U.S. dollars.
- (d) If the currency exchange rate between the US dollar and Australian dollar, where the current rate is 1 US Dollar = 1.47 Australian dollar, varies by more than 5% for a period of no less than 3 months, either party may seek to adjust the pricing to reflect the change in the currency exchange rate. The exchange rate information used to inform this decision will be sourced from the US Federal Reserve Board - Foreign Exchange Rates - Country Data - H.10. (<https://www.federalreserve.gov/releases/h10/hist/>). The intent of this section is to adjust for the value of U.S. dollar pricing in Australian dollars such that, through the term of this Agreement, Transmax will generally receive the same number of Australian dollars after conversion.
- (e) Transmax may only issue invoices to the Customer in accordance with the terms of this Agreement. Invoices shall be in such form and contain such information as reasonably required by the Customer.

- (f) The Customer may, acting reasonably and in good faith, dispute an invoice. If so, the Customer may withhold payment of the amount in dispute until the dispute is resolved but must pay the undisputed portion of the invoice on time.
- (g) If an invoice is disputed, the parties will work together to resolve such dispute in good faith and where applicable, Transmax will submit a revised invoice to the Customer.
- (h) The parties have no right of set-off against each other.
- (i) If the Customer requests additional functionality or software modules not covered by this Agreement but that are available from Transmax, Transmax will provide the Customer with the price for such functionality or software modules, and the Customer may purchase such additional functionality or software modules if the Customer so desires. Subject to the foregoing, Transmax may not increase the Fees or add new Fees until after 31 December 2026. After that date, Transmax may increase the Fees by no more than 10% a year by giving the Customer at least 30 days' prior notice.
- (j) Transmax may elect to charge the Customer interest at the rate of 1.5% per month (or the highest rate permitted by Law, if less) on all late payments.
- (k) All Fees paid by the Customer to Transmax are non-refundable, unless otherwise stated in this Agreement.

## **6.2 Taxes**

- (a) The Fees exclude any taxes or duties payable in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by Transmax, the Customer must pay to Transmax the amount of such taxes or duties in addition to any fees owed under this Agreement.
- (b) Notwithstanding the foregoing, if the Customer has obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed, the Customer may provide Transmax with such exemption information, and Transmax will use reasonable efforts to provide the Customer with invoicing documents designed to enable the Customer to obtain a refund or credit from the relevant revenue authority, if such a refund or credit is available.
- (c) The Customer will pay all fees net of any applicable withholding taxes. The parties will work together to avoid any withholding tax if exemptions, or a reduced treaty withholding rate, are available. If Transmax qualifies for a tax exemption, or a reduced treaty withholding rate, Transmax will provide the Customer with reasonable documentary proof. The Customer will provide Transmax reasonable evidence that the Customer has paid the relevant authority for the sum withheld or deducted.
- (d) Transmax notified the Customer of THE DOUBLE TAXATION TAXES ON INCOME CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND AUSTRALIA, available at <https://www.irs.gov/pub/irs-trty/aus.pdf>.

## **7 CONFIDENTIALITY**

- (a) Each party agrees to keep strictly confidential, and not to disclose, the Confidential Information of the other party.
- (b) Each party agrees to use the Confidential Information of the other party solely to carry out its obligations or receive the benefits of this Agreement.
- (c) Notwithstanding the foregoing, a party may disclose Confidential Information of the other party:
  - (i) to its legal advisors, accountants, auditors on a confidential need-to-know basis;

- (ii) to its employees and contractors on a confidential need-to-know basis;
  - (iii) in enforcing this Agreement or in a proceeding arising out of or in connection with this Agreement; or
  - (iv) to the extent required by Law including, but not limited to, the California Public Records Act (“CPRA”) or pursuant to a binding order of a government agency or court.
- (d) Subject to clause 7(e) below, the Customer must not disclose specific confidential information contained in this Agreement and marked as confidential, to anyone other than to the Customer’s legal advisors, accountants and auditors on a confidential basis. Transmax acknowledges that Customer is subject to the CPRA. Transmax acknowledges that the entirety of this Agreement is not exempt from disclosure under the CPRA. If Customer receives a CPRA request, Transmax shall provide in writing to Customer a valid legal basis under the CPRA for nondisclosure of any portion of the Agreement marked as confidential.
- (e) In addition to the above, the following shall apply to any withholding by Customer of Transmax Confidential Information:
- (i) Transmax, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the withholding from disclosure under the CPRA by Customer at Transmax’s request of any Transmax Confidential Information.
  - (ii) Transmax shall indemnify and hold Customer harmless from all costs and expenses, including attorney’s fees in connection with any such action; and
  - (iii) Customer shall have no liability to Transmax for disclosing any records in compliance with its requirements under the CPRA.

## 8 PRIVACY

- (a) Each party must comply with all applicable Privacy Laws in respect of Personal Information that:
- (i) one party discloses to the other party; or
  - (ii) comes into the possession or control of that party arising out of or in relation to the performance of this Agreement.
- (b) The Software is not designed to process Personal Information and the Customer must not input Personal Information into the Software.

## 9 FORCE MAJEURE

- (a) Subject to the requirement to give notice under this clause, if the performance by any party (**Affected Party**) of all or any of its obligations under this Agreement is prevented or delayed (in whole or in part) due to any Force Majeure Event, this Agreement will continue and remain in effect but the Affected Party will not be in breach of this Agreement for that reason only, and the Affected Party will be granted a reasonable extension of time to complete performance of its affected obligations.
- (b) The Affected Party must promptly, not to exceed twenty-one (21) days, after becoming aware of a Force Majeure Event, give written notice to the other party of the nature of the Force Majeure Event and the way and the extent to which its obligations are prevented or delayed and notify the other party of any material change in these matters and use its reasonable endeavours to limit the effects of the Force Majeure Event, and promptly carry out its obligations as soon as, and to the extent that, it is able to do so.



## 10 TERMINATION AND SUSPENSION

- (a) Either party may terminate this Agreement with immediate effect by giving written notice to the other party at any time if:
- (i) the other party experiences an Insolvency Event; or
  - (ii) the other party breaches any material provision of this Agreement which is incapable of being remedied, or where the breach is capable of being remedied, fails to remedy the breach within 21 days after receiving written notice from the terminating party requiring it to do so; or
  - (iii) required to comply with any Law.
- (b) The Customer may terminate this Agreement on 90 days' written notice for any reason and without cause. If the Customer does so, the Customer must pay Transmax for any outstanding sums due or incurred prior to the date of termination and the early termination fee as set out in Schedule 3.
- (c) Without limiting Transmax's right to terminate, Transmax may immediately suspend provision of the Software to the Customer:
- (i) if the Customer is overdue on payment of Fees by more than 7 days after notice from Transmax of such overdue Fees, such notice not to be given until 45 days after the relevant invoice for such Fees was issued to the Customer; or
  - (ii) the Customer's or an End User's use of the Software poses a security risk to the Software or any third party, could adversely impact Transmax's systems, the Software or the systems of any other customer, or could be fraudulent, as reasonably determined by Transmax; or
  - (iii) if the Customer otherwise breaches this Agreement after notice of such breach and reasonable opportunity to cure.
- Transmax shall immediately notify Customer of the cause for suspension, and the actions of Customer required in order for Transmax to reinstate provision of the Software.
- (d) The Service Levels do not apply during any period of suspension.
- (e) The Customer may not withhold payment of Fees because of or during any period of suspension.
- (f) Following any termination or expiration of this Agreement, at the Customer's request, Transmax will make its staff reasonably available to assist with any transition from the Software to other software on mutually agreeable hourly rates.
- (g) If the Customer terminates this Agreement under clause 10(a)(ii), then Transmax must refund to the Customer all Fees paid by the Customer to Transmax related to the period after the date of termination on a *pro rata* basis.

## 11 WARRANTIES

Each party warrants that it:

- (a) has the authority to enter into and perform its obligations under this Agreement and that this Agreement has been duly executed and is a legal, valid and binding Agreement;
- (b) will comply at all times with applicable Laws; and
- (c) will not do anything or make any statement that could be reasonably expected to harm the reputation of the other party.

**12 TRANSMAX WARRANTIES**

- (a) Transmax warrants that:
- (i) Transmax has all applicable licenses, permits and authorisations required to perform its obligations in accordance with this Agreement; and
  - (ii) as at the Commencement Date, the Software will have the functionality as set out in the Product Description; and
  - (iii) Transmax will implement security procedures that Transmax considers to be appropriate and that comply with industry best practice to identify reasonably foreseeable risks to security and unauthorized access to the software and to minimize security risks, including through risk assessment and regular testing. Transmax will designate one or more employees to coordinate and be accountable for the security procedures.
- (b) Transmax acknowledges that the Customer has entered into this Agreement in reliance on the warranties in detailed in this clause.

**13 INDEMNIFICATION, DISCLAIMER AND LIMITATIONS ON LIABILITY**

- (a) Transmax shall indemnify and defend the Customer and its subcontractors, personnel and Caltrans against Losses reasonably sustained or incurred by the Customer as a result of any third-party claim for a cause of action, liability, claim, proceeding, suit or demand arising out of or in connection with any wilful misconduct or unlawful or fraudulent act or omission of Transmax relating to this Agreement. In addition, the foregoing indemnification and defense obligation shall also apply to any negligence of Transmax in performance of this Agreement, but such obligation shall be limited to the extent covered by insurance.
- (b) THE SOFTWARE IS PROVIDED "AS IS." EXCEPT TO THE EXTENT PROHIBITED BY LAW, OR TO THE EXTENT ANY STATUTORY RIGHTS APPLY THAT CANNOT BE EXCLUDED, LIMITED OR WAIVED, OR TO THE EXTENT EXPRESSLY SET OUT IN THIS AGREEMENT, TRANSMAX (A) MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SOFTWARE, AND (B) DISCLAIMS ALL WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES (I) OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR QUIET ENJOYMENT, (II) ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, (III) THAT THE SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, AND (IV) THAT ANY CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED.
- (c) Except to the extent prohibited by Law, neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party whether in contract, tort (including negligence) or otherwise in connection with the Agreement, even if a party has been advised of or is aware of the possibility of such damage.
- (d) Subject to clause 13(e), except to the extent prohibited by Law, the maximum liability of one party to the other party, whether in contract, tort (including negligence) or otherwise in connection with the Agreement (including under an indemnity), is limited to the Fees paid to Transmax under this Agreement in the one year period prior to the event occurring that gives rise to the liability.
- (e) The exclusions and limitations of liability in clauses 13(d) do not apply to liability in relation to:
- (i) personal injury, including sickness and death;
  - (ii) loss of, or damage to, tangible property;
  - (iii) an infringement of Intellectual Property Rights;



- (iv) any wilful misconduct, or fraudulent act or omission;
  - (v) a third party claim covered by clause 13(a);
  - (vi) any breach of any obligation under clause 7; or
  - (vii) any obligation to pay Fees to Transmax.
- (f) The parties agree that the waivers and limitations specified in this clause 13 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.
- (g) A party who suffers loss or damage must use reasonable steps to mitigate its loss. The other party will not be responsible for any loss, damage or expenses to the extent that the injured party could have avoided or reduced the amount of the loss, damage or expense, by taking reasonable steps to mitigate its loss.
- (h) Transmax's liability under this Agreement will be reduced proportionally to the extent to which any loss was caused or contributed to by any negligence or wilful misconduct of the Customer or its employees or agents.
- (i) Except as otherwise expressly set forth in this Agreement, and except to the extent prohibited by Law, Transmax excludes liability to the Customer whether in contract, tort (including negligence) or otherwise in connection with the Agreement (including under an indemnity) for:
- (i) the way the Customer and its Personnel use the Software or for the safety of road users; or
  - (ii) personal injury, death or property damage arising from or related to the failed use, misuse, non-operation or incorrect operation by the Customer of the Software or because of any advice given by Transmax; or
  - (iii) claims made by third parties against the Customer for, relating to or because of the failed use, misuse, non-operation or incorrect operation by the Customer of the Software or because of any advice given by Transmax.

The foregoing exclusion shall not apply to liability that arises from a third-party claim covered by clause 13(a).

## **14 INSURANCE COVERAGE**

- (a) Transmax warrants that it will maintain sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by law.
- (b) Without limiting the foregoing, to the extent this Agreement creates exposure generally covered by the following insurance policies, Transmax will maintain at its sole cost and expense at least the following insurance covering its obligations under this Agreement:
- (i) Public & Products Liability at limits no less than A\$20 million in aggregate;
  - (ii) Workers' Compensation, as required by law;
  - (iii) Technical Professional Indemnity insurance at limits no less than A\$5 million in aggregate;
  - (iv) Cyber liability at limits no less than A\$1 million in aggregate.
- (c) Transmax will have the Customer noted on the relevant insurance policies listed above (other than Workers' Compensation).

**15 ANTI-BRIBERY AND CORRUPTION**

Each party represents to the other that neither it, nor any of its representatives have been induced to enter into this Agreement, or to cause this Agreement to be entered into, as a result of any illegitimate gift, consideration or other benefit paid by a person to any other person.

**16 CONFLICTS OF INTEREST**

Each party must take appropriate steps to ensure that the other party is not placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of a party, its officials, officers or employees under this Agreement. The parties will disclose to each other the full particulars of any such conflict of interest which may arise.

**17 ACCESS TO CUSTOMER IT SYSTEMS**

- (a) The Customer will coordinate with Caltrans who may provide Transmax with access to and use of its information technology systems, including development, test and production environments (“IT Systems”).
- (b) If Transmax is granted such access and use, Transmax must:
  - (i) access and use only the part of the IT Systems for which it is specifically authorised and no other part of the Caltrans IT Systems;
  - (ii) access and use the IT Systems only to perform its obligations under this Agreement and not for any other purpose; and
  - (iii) comply with the policies set out in Schedule 4. If the policies are materially updated or changed, or if the Customer requires compliance with new policies, then Transmax (acting reasonably) may charge additional Fees if such updates, changes or additions increase Transmax’s costs.
- (c) If Transmax is granted such access and use, Transmax must not:
  - (i) use the IT Systems directly or indirectly for any activity or transmit any information or material unlawfully or which is obscene, indecent, uses offensive language, defames or offends any person;
  - (ii) tamper with, hinder the operation of or make unauthorised modifications to the IT Systems;
  - (iii) copy or collect in any way any data from the IT Systems, other than as necessary to perform its obligations under this Agreement;
  - (iv) knowingly, recklessly or negligently transmit any virus or other disabling feature to or from the IT Systems;
  - (v) remove, disable or modify any security, antivirus or other software in the IT Systems;
  - (vi) damage any of the Customer’s hardware; or
  - (vii) upload anything onto the IT Systems without the Customer’s prior approval.
- (d) Transmax agrees that the Customer may monitor Transmax’s activities in performing its obligations under this clause, including by computer surveillance.
- (e) All networking equipment and cloud services provided by Transmax under this Agreement shall meet the ISO27001 security standard or equivalent. Transmax shall make reasonable efforts to ensure that any networking equipment and cloud services provided by Transmax under this Agreement meet Caltrans IT Standards and are configured to meet existing Caltrans security requirements as

set out in Schedule 2. This clause applies from when the Software goes-live in a production environment. If there is non-compliance with this clause at go-live, Transmax will use reasonable endeavors to come into compliance as soon as reasonably practical and will not be deemed a breach of contract.

## **18 RECORDS AND AUDIT**

- (a) During the Term and for a period of one year thereafter, Transmax will keep all usual and proper records related to the Software and this Agreement.
- (b) The Customer, Caltrans and the U.S. Federal Highway Administration (“FHWA”) may, upon seven days’ notice, audit Transmax’s records and consult with Transmax’s accountants for the purpose of verifying Transmax’s compliance with the terms of this Agreement, provided that any such audits must be conducted during normal business hours in such a manner as to not unreasonably interfere with the normal business operations of Transmax. Transmax shall provide remote access to records relevant to the audit and reasonably requested by the Customer, as necessary, for Customer, Caltrans and FHWA to exercise its rights under this clause.
- (c) Transmax agrees to promptly correct any deficiencies detected in the audit and will promptly refund any overpayments disclosed by such an audit.

## **19 ASSIGNMENT, SUBCONTRACTING AND NON-SOLICITATION**

- (a) Transmax must not assign or novate, directly or indirectly, any of its rights or obligations under this Agreement without the prior written consent of the Customer, except that Transmax may assign this Agreement in connection with the sale or reorganisation of all or part of Transmax’s business, or due to Queensland government machinery of government change.
- (b) Transmax may not subcontract any of its obligations and responsibilities under this Agreement without obtaining advance written consent of the Customer., Transmax remains responsible for the performance and conduct of its subcontractors. The Customer gives Transmax permission to subcontract to AWS.
- (c) Transmax is an independent contractor for the Customer, and nothing in this Agreement is intended to create or shall be construed as creating an employer-employee relationship or a partnership, agency, joint venture, or franchise.
- (d) Transmax acknowledges that it is not authorised to make any contract, agreement or warranty on behalf of the Customer.
- (e) The Customer acknowledges that it is not authorised to make any contract, agreement or warranty on behalf of Transmax.
- (f) During the period commencing on the Commencement Date and ending one year following the end of the Term, neither party must not, without the other party’s prior written consent, directly or indirectly; (i) solicit or encourage any person to leave the employment or other service of the other party; or (ii) hire any person who has left the employment within the one year period following the termination of that person’s employment with the other party.

## **20 SURVIVAL**

Without limiting any other provision of this agreement, clauses 5, 7, 8, 13 and 23 survive termination or expiry of this Agreement for any reason.

## 21 REPRESENTATIVES

Schedule 1 sets out the representatives of each party for the purposes of this Agreement. These representatives will be the first point of contact between the parties in relation to any matter relevant to the Agreement. The contact details of each representative may be updated from time to time by the party that appointed the relevant representative by notice in writing to the other party.

## 22 NOTICES

Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by the representative or a person duly authorised by the representative;
- (b) must be addressed and delivered to the intended recipient by prepaid air courier or by hand or email to the address or email address of the representative of the party as specified in Schedule 1, or as last notified by the intended recipient to the representative; and
- (c) will be conclusively taken to be duly given or made when delivered, received or left at the above address, or received at the above email address, provided that for email notice to be effective, the email must be copied to the Customer's secondary contact, as identified in Schedule 1. If delivery or receipt occurs on a day that is not a business day in the place to which the Notice is sent or is later than 4pm (local time) at that place, it will be conclusively taken to have been duly given or made at the commencement of business on the next business day in that place.

## 23 DISPUTE RESOLUTION

- (a) If a dispute arises out of or in relation to this Agreement, either party may notify the other in writing in which case the nominated representative of each affected party must promptly attempt in good faith to resolve the dispute. If the parties are unable to resolve the dispute within seven days of the written notification referred to in this clause, each party must promptly refer the dispute for resolution to one of the Managing Director, Chief Executive or Chief Operating Officer (**Senior Executive**) of that party.
- (b) If the parties are unable to resolve the dispute within 21 days following referral to the Senior Executive of the relevant parties, then the dispute must be resolved by arbitration in accordance with clause (c).
- (c) Any dispute, controversy or claim arising under, out of or relating to this Agreement (including any Statement of Work) and any subsequent amendments of this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, must be referred to and finally determined by arbitration in accordance with the International Chamber Of Commerce (ICC) Rules of Arbitration. The arbitral tribunal shall consist of a sole arbitrator. The parties agree that arbitration shall be held virtually. The language to be used in the arbitral proceedings shall be English. The dispute, controversy or claim shall be decided in accordance with the law applicable in the federal and state courts of California in the United States, without regard to any conflict of law principles.
- (d) Nothing in this clause 23, shall prevent a party from seeking urgent injunctive relief before an appropriate court.

## 24 GENERAL

- (a) This Agreement contains the entire agreement between the parties with respect to its subject matter.

- (b) Unless otherwise specifically provided in a Schedule, nothing herein shall be construed as creating a minimum commitment for business on the part of the Customer to Transmax.
- (c) This Agreement may only be amended by written agreement executed by all the parties.
- (d) No failure to exercise or delay in exercising any right, power or remedy under this Agreement operates as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (e) The rights, powers and remedies provided to a party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or any agreement.
- (f) Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
- (g) Any claim for breach of contract or breach of warranty must be notified to the other party within 90 days of the breach occurring, and any lawsuit relating to such breach must be filed within 1 year of the breach occurring.
- (h) Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.
- (i) Except as to any rights or obligations of Caltrans expressly set forth herein, this Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to this Agreement.
- (j) This Agreement and, to the extent permitted by law, all related matters including non-contractual matters, is governed by the laws of the State of California. In relation to such matters each party irrevocably accepts the exclusive jurisdiction of the Federal and State courts within the State of California and waives any right to object to the venue on any grounds.
- (k) This Agreement may be executed in any number of counterparts. All counterparts will be taken to constitute one agreement. A manually signed copy of this Agreement which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes. This Agreement may be signed using electronic signatures.

## **25 DEFINITIONS AND INTERPRETATION**

### **25.1 DEFINITIONS**

The following definitions apply unless the context requires otherwise.

**Commencement Date** is defined in Schedule 1.

**Confidential Information** means all non-public business or technical information, in any form whether tangible or not, disclosed or communicated by a party to the other, or learnt or accessed by, or to which the other party is exposed as a result of entering into this Agreement, and any information or data of Customer provided by Customer or generated through use of the Software.

Confidential Information does not include information which party can demonstrate by written records was:

- (a) already known to that party;
- (b) received by that party from a third party not under a duty of confidence; or

- (c) independently developed by that party by people who did not have access to the Confidential Information of the other party.

**Consequential Loss** means any indirect or consequential Loss, including any loss of profits, loss of revenue, loss of or damage to data, loss of contract value, loss of anticipated savings, loss of opportunity, and loss of reputation or goodwill.

**CPI** means the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items (1982-84=100), as reported by the Bureau of Labor Statistics of the U.S.

**Documentation** means the documentation and other explanatory materials that is generally provided by Transmax to the users of the Software, whether in hard copy or electronic format, to assist the users of the Software understand and use the Software.

**End Users** are the employees, contractors and consultants of the Customer as set out in clause 4.1.

**Fees** means the fees and expenses set out in Schedule 1.

**Force Majeure Event** affecting a party means a circumstance beyond the reasonable control of that party causing that party to be unable to observe or perform on time an obligation under this Agreement, including acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, revolution and acts of war and war, general strikes (other than of its own staff), embargo, pandemic, or power, water and other utility shortage.

**Initial Term** means the initial term set out in Schedule 1.

An **Insolvency Event** occurs in respect of a person where:

- (a) the person ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of all or a substantial part of its assets;
- (b) upon the institution against the person of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of the person's debts;
- (c) upon the person making an assignment for the benefit of creditors;
- (d) upon the person's dissolution; or
- (e) any analogous or comparable event takes place in any jurisdiction.

**Intellectual Property Rights** means all industrial and intellectual property rights of any kind including but not limited to copyrights (including rights in computer software), trademarks, service marks, designs, patents, trade secrets, semi-conductor or circuit layout rights, trade, business, domain or company names, rights in Confidential Information, know-how and other proprietary rights (whether or not any of these are registered and including any application, or right to apply, for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these, which may subsist anywhere in the world, but excludes moral rights, and similar personal rights, which by law are non-assignable.

**Law** means all applicable laws including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by laws, rules, regulatory principles, requirements and determinations, mandatory codes of conduct and standards, writs, orders, injunctions and judgments, and includes any Privacy Laws of the United States.

**Loss** means any claim, loss, damage, liability, cost, charge or expense (including legal expenses on a full indemnity basis), however arising, and whether present or future, fixed or unascertained, actual or contingent.



**Personal Information** means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.

**Personnel** means, in respect of a person, any officer, employee, contractor, servant, agent, or other person under the person's direct or indirect control and includes any subcontractors.

**Privacy Laws** means any international, national, federal, provincial, state, or local law, code, rule or regulation that regulates the processing of Personal Information in any way, including data protection laws, laws regulating marketing communications or electronic communications, information security regulations and security breach notification rules.

**Product Description** is a description of the Software as set out in Schedule 2.

**Service Levels** for the availability and performance of the Software are specified in the Product Description in Schedule 2.

**Software** is listed in Schedule 1, including the modules of the Software provided under this Agreement.

**Term** means the period from the Commencement Date until the end of the Initial Term or any applicable renewal term.

## 25.2 INTERPRETATION

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) the singular includes the plural and conversely;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to a person includes any body corporate, unincorporated body or other entity and conversely;
- (d) a reference to any party to this Agreement or any other agreement or document includes the party's successors and permitted assigns;
- (e) a reference to any agreement or document (including a reference to this Agreement) is to that agreement or document as amended, notated, supplemented, varied or replaced from time to time, where applicable, in accordance with this Agreement or that other agreement or document;
- (f) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (g) a reference to conduct includes any omissions, statement or undertaking, whether or not in writing;
- (h) a reference to includes, means includes without limitation; and
- (i) all references to \$ are to U.S. dollars, unless otherwise specified. Clause 14 (insurance) is Australian dollars.

**SIGNATURE PAGE TO  
SAAS AGREEMENT  
FOR I-15 SMART FREEWAY PILOT PROJECT**

**Executed** as an Agreement.

**Signed for Transmax Pty Ltd** by  
its authorised representative:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Authorised Representative Signature

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Position:

**Signed for Riverside County  
Transportation Commission**  
by its authorised representative:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Authorised Representative Signature

\_\_\_\_\_  
Aaron Hake

\_\_\_\_\_  
Position: Executive Director

Approved as to form:

Best, Best & Krieger LLP

\_\_\_\_\_  
General Counsel to Riverside County  
Transportation Commission



**Schedule 1 to SaaS  
Agreement**

**Schedule 1 to SaaS Agreement**

|   |   |
|---|---|
| <b>A. Contract Number</b>                                 | Agreement No. 23-01-034-00  |
| <b>B. Software</b>  | STREAMS Smart Motorways   |
| <b>C. Software Modules provided</b>                       |   |
| <b>D. Commencement Date</b>                               | March 1, 2025   |
| <b>E. Initial Term</b>                                    | Two Years from the Commencement Date  |
| <b>F. Fees</b>  | See Schedule 3  |
| <b>G. Additional Conditions</b>                           | Caltrans/FHWA requirements set forth in Schedule 5  |
| <b>H. Transmax Representative and address for notices</b> | Name: Lynette Sperling<br>Role: Chief Operating Officer<br>Address: Level 5, 143 Coronation Drive, Milton QLD 4064<br>Email: lynette.sperling@transmax.com.au<br>cc to: [insert]  |
| <b>I. Customer Representative and address for notices</b> | Name: <i>Aaron Hake</i><br>Role: <i>Executive Director</i><br>Address: <i>PO Box 12008, Riverside, California 92502-2208</i><br>Email: <i>ahake@rctc.org</i><br>Customer secondary contact for email notices: <i>egalloway@rctc.org</i> |

### CONFIDENTIALITY NOTICE

This document contains confidential information of Transmax Pty Ltd. Clause 7(d) and (e) shall apply to any request for distribution of this Agreement.

### TRADEMARKS

TRANSMAX® and STREAMS® are registered trademarks of Transmax Pty Ltd in Australia. They are protected against unauthorised use under the *Trade Marks Act (1995)* and are valuable business assets.

**Schedule 2 to SaaS Agreement**

**PRODUCT DESCRIPTION (INCLUDING SERVICE LEVELS)**

**[Attached behind this page]**

**CONFIDENTIAL**

**Schedule 3 to SaaS Agreement**

**FEES AND PRICING**

**Table 1**

| Item                        | Amount (USD)       |
|-----------------------------|--------------------|
| Year 1 SaaS                 | \$1,212,675        |
| Year 2 SaaS                 | \$1,297,562        |
|                             |                    |
| <b>Total Contract Value</b> | <b>\$2,510,237</b> |

**Early Termination Fee Schedule**

In the event of termination for convenience by the customer, prior to the expiry of the 2-year term, the customer shall pay a pro-rated fee to the contractor, equal to the following amount at the following times. The customer agrees to pay 85% of the total fees outstanding and acknowledges this amount represents the contractor's reasonable business costs and does not represent a penalty.

Equation is - Total Contract Value divided by Term (24 months), multiplied by months remaining when termination requested, minus 15%, equals Early Termination Fee

**Table 2**

| Number of months remaining in contract term when early termination request is made | Early Termination Fee |
|--|-----------------------|
| 24 months  | \$2,133,701           |
| 21 months  | \$1,866,989           |
| 18 months  | \$1,600,276           |
| 15 months  | \$1,333,563           |
| 12 months  | \$1,066,851           |
| 9 months   | \$800,138             |
| 6 months   | \$533,425             |
| 3 months   | \$313,780             |

**Schedule 4 to SaaS Agreement**

**POLICIES**

## Schedule 5 to SaaS Agreement

### CALTRANS/FHWA FUNDING REQUIREMENTS

#### NONDISCRIMINATION & 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 its 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 its subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated thereunder (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. If this Agreement is federally funded, the Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

G. If this Agreement is federally funded, Consultant shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of subconsultants.

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

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

## 2. DEBARMENT AND SUSPENSION CERTIFICATION

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.

## 3. TITLE VI ASSURANCES

During the performance of this Agreement, the consultant, for itself, its assignees and successors in interest (hereinafter collectively referred to in this section as CONSULTANT) agrees as follows:

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 recipient 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 (1) through (6) 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 recipient 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 the recipient 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.

G. During the performance of this contract, 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 on 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. **PROMPT PAYMENT**

Consultant or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed Consultant on account of the work performed by the subconsultants, to the extent of each subconsultant’s interest therein. 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 or subconsultant to a subconsultant, Consultant or subconsultant 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 or subconsultant to a penalty, payable to the applicable 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.



## 5. 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 Consultant or the violating 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.

## 6. 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.

## 7. DBE PARTICIPATION

Caltrans has developed a statewide DBE program pursuant to 49 C.F.R. Part 26. The requirements and procedures, as applicable, of the Caltrans DBE program are hereby incorporated by reference into this Agreement. Even if no DBE participation will be reported, Consultant shall complete all DBE forms in compliance with the Caltrans DBE program, and a final utilization report in the form provided by the Commission.

A. This Agreement is subject to Title 49, Part 26 of the Code of Federal Regulations 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.

B. This Agreement has established a 17% DBE goal. If a DBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met. A DBE is a firm meeting the definition of a DBE as specified in 49 CFR.

C. All DBE participation will count toward the Caltrans 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."

D. DBE and other small businesses (SB), as defined in Title 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Consultant, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable

requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the contractor 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, Caltrans or the Department of Transportation deems appropriate.

E. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

F. A DBE may be terminated only as further set forth in Section 13 below.

## **8. DBE PARTICIPATION GENERAL INFORMATION**

It is Consultant's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Caltrans DBE program. Particular attention is directed to the following:

A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).

B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.

C. A DBE joint-venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint-venture commensurate with its ownership interest.

D. A DBE must perform a commercially useful function, pursuant to 49 CFR 26.55 that is, must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work, as more fully described in section 8 below.

E. The Consultant shall list only one subcontractor for each portion of work as defined in the Consultant's bid/proposal and all DBE subcontractors should be listed in the Consultant's bid/cost proposal list of subcontractors.

F. A Consultant who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

G. Consultant shall notify the Commission's contract administrator or designated representative of any changes to its anticipated DBE participation prior to starting the affected work.

## **9. COMMERCIALY USEFUL FUNCTION**

A. A DBE performs a commercially useful function 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 commercially useful function, 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. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

B. A DBE does not perform a commercially useful function 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.

C. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement 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 commercially useful function.

#### **10. DBE CERTIFICATION AND DE-CERTIFICATION STATUS**

If a DBE subcontractor is decertified before completing its work, the decertified subcontractor shall notify the Contractor in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the Contractor in writing with the date of certification. Any changes should be reported to the Commission's Contract Administrator within 30 days.

#### **11. DBE RECORDS**

A. The Contractor shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company and the total dollar amount actually paid each business regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime Contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

In addition to all other requirements, Consultant shall complete and submit, on a monthly basis, the Monthly DBE Payment form (Caltrans Exhibit 9-F of Chapter 9 of the LAPM).

B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the most current version of the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE)," CEM- 2402F (Exhibit 17-F in Chapter 17 of the LAPM), certified correct by the Contractor or the Contractor's authorized representative and shall be furnished to the Commission's Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in the Commission withholding \$10,000 until the form is submitted. This amount will be returned to the Contractor when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE)" is submitted to the Commission's Contract Administrator.

a. Prior to the fifteenth of each month, the Contractor shall submit documentation to the Commission's Contract Administrator showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Commission's Contract Administrator showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

b. The Contractor shall also submit to the Commission's Contract Administrator documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans "Monthly DBE Trucking Verification," CEM-2404(F) form provided to the Contractor by the Commission's Contract Administrator.

#### **12. REPORTING MATERIAL OR SUPPLIES PURCHASED FROM DBEs**

When Reporting DBE Participation, Material or Supplies purchased from DBEs may count as follows:

A. If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count 60 % of the cost of the materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

### 13. TERMINATION AND SUBSTITUTION 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 substitute 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 attached Consultant Contract DBE Commitment form.

The Commission authorizes a request to use other forces or sources of materials if Consultant shows any of the following justifications:

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.
8. Listed DBE voluntarily withdraws with written notice from the 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 the Contract.
11. The Commission determines other documented good cause.

Consultant shall notify the original DBE of the intent to use other forces or material sources and provide the reasons and provide the DBE with 5 days to respond to the notice and advise Consultant and the Commission of the reasons why the use of other forces or sources of materials should not occur.

Consultant's request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from Consultant to the DBE regarding the request.
3. Notices from the DBEs to Consultant regarding the request.

If a listed DBE is terminated or substituted, Consultant must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

#### **14. 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.

#### **15. 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).

#### **16. 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.

#### **17. FUNDING REQUIREMENTS; COST PRINCIPLES**

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

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

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

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.

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.

**18. 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.

**19. 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.

**20. 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.

## **21. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

Consultant shall not 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 funded under this Contract. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

b. Telecommunications or video surveillance services provided by such entities or using such equipment.

c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.





Agreement No. 23-31-044-00

**PROFESSIONAL SERVICES AGREEMENT  
WITH FHWA FUNDING/ASSISTANCE**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
WSP USA, INC.  
FOR  
INTELLIGENT TRANSPORTATION SYSTEM SERVICES  
FOR THE  
INTERSTATE 15 SMART FREEWAY PROJECT**

**Parties and Date.**

This Agreement is made and entered into this \_\_\_ day of \_\_\_, 2024, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and WSP USA 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. A source of funding for payment for professional services provided under this Agreement is federal funds administered by the California Department of Transportation ("Caltrans") from the United States Department of Transportation pursuant to the following project/program: CONGESTION MITIGATION AND AIR QUALITY (CMAQ).
- E. 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 INTELLIGENT TRANSPORTATION SYSTEM services to public clients, is licensed in the State of California (if necessary), and is familiar with the plans of the Commission.

F. The Commission desires to engage Consultant to render such services for the INTERSTATE 15 SMART FREEWAY PROJECT ("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 INTELLIGENT TRANSPORTATION SYSTEM 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 June 30, 2027, 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 Chris Barrow 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: Chris Barrow; Darren Henderson; Melissa Brady; Scott Pitera; Lisa Woodward; Daniel Johnson; Frank Penry; and Kiera Kwan.

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 three percent (3%) 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 Sixty-Six Thousand Four Hundred Thirty-Five Dollars (\$66,435). 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 One Million Five Hundred Six Thousand Nine Hundred Fourteen Dollars (\$1,506,914).

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 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) Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Section.

(c) 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>.

(d) 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

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 neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement. 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:

WSP USA INC.  
15231 Laguna Canyon Road  
#100  
Irvine, CA 92618

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]

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**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<br/>TRANSPORTATION COMMISSION</b></p> <p>By: _____<br/>Aaron Hake<br/>Executive Director</p> <p><i>Approved as to Form:</i></p> <p>By: _____<br/>Best, Best &amp; Krieger LLP<br/>General Counsel</p> | <p><b>CONSULTANT</b></p> <p>By: _____<br/>Signature</p> <p>_____ Name</p> <p>_____ Title</p> <p><b>ATTEST:</b></p> <p>By: _____</p> <p>Its: _____</p> |
|--|---|

\* 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**

# I-15 SMART FREEWAYS PILOT PROJECT OPERATIONS SUPPORT

Scope of Services

*Prepared for :*

**RCTC**

**RIVERSIDE  
COUNTY  
TRANSPORTATION  
COMMISSION**

*Prepared by:*



*In partnership with*



June 20, 2024

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## 1. BACKGROUND

Riverside County Transportation Commission (RCTC) and the California Department of Transportation (Caltrans) intends to engage WSP USA (WSP) to support the deployment of a Smart Freeways pilot project on Interstate 15 (I-15) northbound from the Riverside/San Diego County line to the I-15/I-215 junction in Murrieta, California. The I-15 Smart Freeways Pilot Project will demonstrate the effectiveness of the Australian Managed Motorways concept (also known as managed freeways or smart freeways) to control traffic flows and alleviate recurrent chronic congestion. The primary goal of the project is to provide more efficient, productive, and reliable freeway traffic flows through the project corridor using advanced transportation management technologies and Intelligent Transportation System (ITS) devices, without the expense and disruption of constructing additional roadway capacity.

This contract will include the necessary Operational Support utilizing the Caltrans communication infrastructure, and Transmax's STREAMS Smart Motorways Dashboard (SMD). Upon completion of a construction contract for the installation and commissioning of ITS devices, the Smart Freeway system will be tuned, and the 2-year pilot period will commence.

Transmax's STREAMS Smart Motorways solution is a sophisticated suite of motorway management tools that enables road operators to tackle congestion and make peoples road journeys safer and more reliable. The suite of motorway management tools included in this pilot will include:

- Coordinated and Adaptive Ramp Metering (CARM)
- Advisory Variable Speed Limits (VSL)
- Device Monitoring, Management and Control

## 2. ACRONYMS AND DEFINITIONS

**AASHTO** – American Association of State Highway and Transportation Officials

**ADT** – Annual Daily Traffic

**AHS** – ALINEA & HERO suite of algorithms

**ATM** – Active Traffic Management

**ATMS** – Advanced Traffic Management System

**CARM** – Coordinated and Adaptive Ramp Metering

**CCTV** – Closed-Circuit Television

**CDOT** – Colorado Department of Transportation

**CHP** – California Highway Patrol

**ConOps** – Concept of Operations

**Caltrans** – California Department of Transportation

**FHWA** – Federal Highway Administration

**HCM** – Highway Capacity Manual

**ICM** – Integrated Corridor Management

**ITS** – Intelligent Transportation Systems

**LOS** – Level of Service

**LUMS** – Lane Use Management System

**MOE** – Measure of Effectiveness

**MUTCD** – Manual on Uniform Traffic Control Devices

**NCHRP** – National Cooperative Highway Research Program

**PeMS** – Performance Monitoring System

**RCTC** – Riverside County Transportation Commission

**RMIS** – Ramp Meter Information System

**SEA** – Systems Engineering Analysis

**SEMP** – Systems Engineering Management Plan

**STREAMS®** – STREAMS® is a comprehensive freeway management system for managing various components of traffic services and operations. STREAMS® is currently the only commercial system authorized to use the ALINEA and HERO suite of algorithms.

**TCD** – Traffic Control Device

**TMC** – Transportation Management Center

**TSMO** – Transportation System Management & Operations

**TRANSMAX** – TRANSMAX is the system implementor of the STREAMS® freeway management system and is a wholly-owned public enterprise of the State of Queensland, Australia.

**USDOT** – United States Department of Transportation

**VicDOT** – Victoria Department of Transportation. VicDOT is the designer, implementer, and operator of the Australian Managed Motorways concept in Melbourne.

**VDS** – Vehicle Detection System

**VMS** – Variable Message Signage

**VSL** – Variable Speed Limit

### 3. PROJECT MANAGEMENT AND ADMINISTRATION

Our Project Manager, Chris Barrow (WSP), will manage overall operations with support from the Deputy Project Manager, Scott Pitera (GHD). They will work together to oversee the WSP Operations staff that will monitor the day-to-day activities, lead coordination with Transmax and Caltrans, and interface directly with RCTC management. This task will cover Management Plans (Operation Staff - escalation and communication), RCTC Staff Coordination Meetings (Weekly), and support at Committee Meetings (Monthly) throughout the project.

## 4. SYSTEMS INTEGRATION & TESTING

Immediately following the commissioning of critical Smart Freeways ITS devices by the ITS Contractor, the WSP operations staff will work closely with Transmax to observe systems integration & testing which will include configuration, training, and data efforts.

### 4.1 STREAMS CONFIGURATION AND TESTING

The WSP team will work with Transmax to support configuration of each device (TIRTL, VSL, Ramp Meter) and its functionality after being brought online to the STREAMS system via access to the Caltrans network through the WSP provided computers.

This effort is expected to be completed over a two-month period of time, assuming no delays with the device commissions performed by the Selected ITS Contractor.

### 4.2 STREAMS SYSTEM TRAINING

The WSP team operations staff will attend training provided by Transmax for the STREAMS Smart Motorways Dashboard (SMD). This effort will focus on the necessary areas of the system for monitoring of device functionality and performance reporting. Task 4.3. It will also be where Transmax will help the RCTC and the WSP team identify which Key Performance Indicators (KPIs) can be pulled from the system and the most efficient way to pull these for on-going reporting through the public facing SMD.

### 4.3 DATA COLLECTION & CALIBRATION

Upon RCTC's acceptance of the Contractors ITS construction project delivery. The WSP team will use the SMD and verify reporting in Caltrans PEMS to collect baseline data for the first three months (The STREAMS System includes a continuous export of performance data from vehicle detectors on the corridor to PEMS). This data will serve as the baseline for the how the existing system is performing with respect to the Volume, Occupancy and Speed on the I-15, and the operation of each ramp in relation to volume and storage utilization.

## 5. LAUNCH, TUNING AND OPERATIONS

Upon completion of Task 4 (Systems Integration & Testing), the project will be focused on two sub-section Operations (Section 5.1) and ITS Issue Resolution (Section 5.2) discussed in further detail below.

Though these sub-sections activities will be similar throughout the length of the project, the level of effort is expected to vary significantly over the two years. The Launch and Tuning Phase, for the first few weeks after the completion of Task 4, will include a heavier focus on resolving any integration and device performance issues, and supporting the fine-tuning efforts by Transmax to get the system running optimally. This phase will have the most attention of the ITS specialist, Field Device Specialist, and ITS System Operator working together to resolve issues as they arise. Support procedures will be documented by Transmax and used in future months by the ITS System Operator to provide further value to the contract by addressing and coordinating more trouble shooting activities. Additionally, the WSP Team will still be performing monitoring, reporting, and supporting the outreach activities and as a result this part of the project is expected to have the highest Full Time Equivalent requirement.

It is expected that after 2 weeks of baseline data collection the system will be ready to enter Full Operations. At this time in the project, the amount of ITS Trouble shooting should be significantly reduced, and the previous 2 weeks will have allowed time for the ITS Systems Operator to document many of the troubleshooting steps from previous issue resolution so that the ITS Specialist and Field Device Specialist are only engaged when a new situation presents itself. The same monitoring, reporting, and support of outreach activities will be performed as well across the next 18 months of system operations.

## 5.1 OPERATIONS

The WSP Team will review the System components along the I-15 Corridor, provide weekly reporting documents for functional and performance tracking, to support data collection needs of RCTC and Project Management Staff. This will be done using the STREAMS System and provided access to the CCTV footage along the corridor with pan, tilt, and zoom control.

The WSP Team will use the allocated hours for the ITS Systems Operator (equivalent 4 hours per day across the life of the contract) to provide the best coverage possible, and will lean heavily on the functionality of the STREAMS platform to alert the WSP Team during the identified Peak Periods (which include an average of 9 hours of per day), as described in the RFP (Scope of work Item #10):

- a. Monday – Thursday 2pm-8pm
- b. Friday 12pm-8pm
- c. Saturday 1pm-6pm
- d. Sunday 12pm-6:30pm

and Concept of Operations (Section 8 - Operational Scenarios):

*“However, ramp meters are anticipated to be active roughly between 6:00 – 10:00 AM in the morning, and 2:00 – 8:00 PM in the evening.”*

### 5.1.1 System Monitoring

The WSP team will monitor the status and verify functionality of all ramp meters (signals, signs, loops), VSL, and TIRTLs for errors or anomalies in the data which could impact the operations before the start of each peak-period. Additionally, they will perform the appropriate task as described in the Concept of Operations Section 8 Operational Scenarios sub-sections 8.1 Typical Off-Peak Operations (Review Data and Coordinate Adjustments as needed), 8.2 Typical Peak-Period Operations (Confirm functionality before AM and PM Peak-Period, respond to alerts from STREAMS, and Analyze operational performance), and 8.3 Incident Event (Coordinate, Respond, and Modify System as needed):

- Documentation
  - o *Equipment Malfunctions*
  - o *Equipment Maintenance*
  - o *Equipment Downtime*
  - o *Incidents during the Peak*
- Analysis
  - o *Corridor Performance*
  - o *Ramp Queue Performance*
- Coordination efforts

- *Caltrans/RCTC/Emergency Management*
  - *Overrides of devices for response to Incident Event*

### 5.1.2 Functional Reporting

The STREAMS System will be used to monitor during peak operation to identify a malfunction or consistent anomaly in the data being received by a TIRTL or vehicle detection loop on the entrance ramp. The operators will use a spreadsheet reporting tool to track the timeline of each of these incidents and their restoration so that RCTC can see the responsiveness of all the partners and where potential improvement opportunities might exist for enhancing this and future projects.

### 5.1.3 Performance Reporting

The STREAMS System will also be used to pull summary reports and identified KPIs in Task 4.2 to document how the I-15 Corridor is performing compared to the Baseline condition without metering all entrances. These reports are anticipated to be some of the most desired information from the Stakeholders in the region and Caltrans. Additionally, it is anticipated that throughout the project the WSP Team will also have coordination with the SMART Freeways Project Design Team for data needs on performance of the system.

### 5.1.4 Public and Stakeholder Outreach Support

The WSP Team will collect and summarize the system reporting information from Task 5.1.2 (Functional) and 5.1.3 (Performance) and prepare update documents for the RCTC Coordination and Committee Meetings. This will allow for a consistent data flow that can be used for Public and Stakeholder Outreach.

## 5.2 ITS ISSUES RESOLUTION

The WSP team will work to document troubleshooting guidelines as events occur in Task 2 so that once in operations phase when an event occurs efficiencies will be gained as a repeating event occurs. When an issue is identified during System Monitoring the ITS Operator will start the appropriate process for documentation and coordination with the appropriate WSP team member ITS Specialist and then the ITS Field Device Specialist to determine what is the best next step to address the issue with the system:

- Documentation
  - *Equipment Malfunctions*
  - *Equipment Maintenance*
  - *Equipment Downtime*
- Coordination efforts
  - *WSP Team (Summary of all activities to PM and DPM for RCTC and Caltrans communication)*
    - *ITS Specialist – remote troubleshooting*
    - *Field Device Specialist – on-site troubleshooting*
      - *Verify if ITS Maintenance or Transmax is needed for resolution*
  - *ITS Maintenance Contractor – Equipment malfunctions*
    - *Replacement*
    - *Repair*
    - *Device Calibration*
  - *Caltrans/RCTC/Emergency Management*



- *Power Failure*
- *Communication*
  - *Fiber Breaks*
- *Overrides of devices for response*
  - *Incident Event*
  - *Device Malfunction*
- *Transmax*
  - *Algorithm Tuning, or*
  - *Software*

### 5.2.1 Coordination with ITS Maintenance Contractor

The WSP Team will engage the ITS Maintenance Contractor once it is determined that the issue is related to a field equipment malfunction that cannot be fixed by a manual or remote reboot of any device by either ITS specialist or is identified by Transmax as not a software issue addressable through STREAMS. The WSP team will engage the ITS Maintenance Contractor and provide a summary of the test/efforts completed for each incident so that they can send the best resource or coordinate with the appropriate vendor to rectify the situation in the field so that normal operations can continue.

The WSP Team will confirm the timeframe for the solution and will then coordinate with Transmax to determine what modifications should be made to the algorithm tuning and if there is anything additional KPI that should be monitored while the device is down.

### 5.2.2 Coordination with Caltrans TMC

The WSP Team will engage with Caltrans TMC if there are any issues with the CCTV or Communications network along the I-15 Corridor so that the appropriate maintenance personnel can be engaged to maintain the ability to remotely monitor the corridor and ensure that the devices in the field can operate with real-time data rather than defaulting into historic data mode for operations.

Additionally, in response to an Incident Event on the Freeway or adjacent arterial, the WSP Operator will support any override request that are received from Caltrans that will enhance the ability of emergency management to arrive on the scene.

### 5.2.3 Coordination with Transmax

The WSP Team will work with Transmax to identify the devices malfunctions found during system monitoring that are not a function of communication issues, errors showing in the devices diagnostics, or apparent blockages of devices in the field.

Additionally, any malfunctions in equipment will be discussed with Transmax so that the appropriate modifications to algorithm can be made to maximize operations with the reduction in real-time data from the field devices.

### 5.2.4 Field Diagnostics

The WSP team will provide Field Diagnostics via site visit as needed after discussions with RCTC and the ITS Maintenance Contractor to maximize the investment of the resources as the staff will be traveling to the site. The ITS Field Device Specialist will have previous coordinated with the ITS Specialist and ITS Operator for initial remote troubleshooting and documented what was done and the outcomes which justify the need for a visit to the site to perform Field Diagnostics to devices in the field.

**EXHIBIT "B"**  
**SCHEDULE OF SERVICES**

**[attached behind this page]**

**DRAFT**

**EXHIBIT "C"**  
**COMPENSATION PROVISIONS**

**[attached behind this page]**

**DRAFT**

**EXHIBIT "C"**  
**COMPENSATION SUMMARY<sup>1</sup>**

| FIRM                            | PROJECT TASKS/ROLE  | COST                   |
|---------------------------------|---|------------------------|
| <i><b>Prime Consultant:</b></i> |   |                        |
| WSP USA Inc.                    | Intelligent Transportation System Operations Support                    | \$ 731,671.56          |
| <i><b>Sub Consultants:</b></i>  |   |                        |
| GHD Inc.                        | Coordination with Transmax, CARM Tech., Operations & Evaluation Support | 722,286.75             |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
|                                 |   |                        |
| <b>SUBTOTAL</b>                 |   | <b>1,453,958.31</b>    |
| <b>OTHER DIRECT COSTS</b>       |   | <b>52,955.25</b>       |
| <b>TOTAL COSTS</b>              |   | <b>\$ 1,506,913.56</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.

DRAFT

**EXHIBIT "D"**

**FEDERAL DEPARTMENT OF TRANSPORTATION  
FHWA AND CALTRANS REQUIREMENTS**

**[attached behind this page]**

**DRAFT**

## 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. For projects awarded on or after March 1, 2020, but before September 1, 2023: after submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to local administering agencies.

C. For projects awarded on or after September 1, 2023: Exhibit 9-F is no longer required. Instead, 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**

|   |  |   |
|---|--|---|
| <p><b>1. Type of Federal Action:</b></p> <p><input type="checkbox"/> a. contract<br/> <input type="checkbox"/> b. grant<br/> <input type="checkbox"/> c. cooperative agreement<br/> <input type="checkbox"/> d. loan<br/> <input type="checkbox"/> e. loan guarantee<br/> <input type="checkbox"/> f. loan insurance</p>  | <p><b>2. Status of Federal Action:</b></p> <p><input type="checkbox"/> a. bid/offer/application<br/> <input type="checkbox"/> b. initial award<br/> <input type="checkbox"/> c. post-award</p>   | <p><b>3. Report Type:</b></p> <p><input type="checkbox"/> a. initial<br/> <input type="checkbox"/> b. material change</p> <p style="text-align: right;"><b>For Material Change Only:</b><br/> year _____ quarter _____<br/> 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<br/> 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>CFDA Number, if applicable _____</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><br/> (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)<br/> (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<br/> <input type="checkbox"/> b. one-time fee<br/> <input type="checkbox"/> c. commission<br/> <input type="checkbox"/> d. contingent fee<br/> <input type="checkbox"/> e. deferred<br/> <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<br/> <input type="checkbox"/> b. in-kind; specify: nature _____<br/> 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<br/> Standard Form - LLL</p>   |



## 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.



# **AGENDA ITEM 11**



| <b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b> |   |
|---|---|
| <b>DATE:</b>                                      | September 11, 2024  |
| <b>TO:</b>  | Riverside County Transportation Commission  |
| <b>FROM:</b>                                      | Western Riverside County Programs and Projects Committee<br>Monica Morales, Senior Management Analyst<br>Eric DeHate, Transit Manager |
| <b>THROUGH:</b>                                   | Aaron Hake, Executive Director  |
| <b>SUBJECT:</b>                                   | Measure A Specialized Transit Award Recommendations for Fiscal Years 2024/25 – 2026/27 Amendment 1                                    |

**WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE AND STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Approve Amendment 1 of additional awards totaling \$978,346 to the Western Riverside County Measure A Specialized Transit Program Fiscal Years (FY) 2024/25 – 2026/27 Call for Projects, for a total program amount of \$10,923,595;
- 2) Direct staff to prepare contract agreements outlining the project scope, schedules, and local funding commitments with Care Connexus for an amount not to exceed \$644,384 and United States Veterans Initiative (U.S. Vets) for an amount not to exceed \$333,962; and
- 3) 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 allocation approximately 11.6 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 1.9 percent of the 2009 Measure A Western County program revenue, or a 16.4 percent share of the 11.6 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 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 Riverside 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. The voter-approved 1989 and 2009 Measure A Expenditure Plans specify funding allocations for the provision of this type of service provided by the transit operators and non-profit agencies.

**DISCUSSION:**

As its June 2024 meeting, the Commission approved 21 applications from 15 different agencies, totaling \$9,945,249 for the FY 2024/25 – 2026/27 Measure A Specialized Transit Program cycle. The approved funding for the program totaled \$13,127,000, with \$3,181,751 remaining (Table 1). Of the recommendations approved by the Commission at its June 2024 meeting, was the ability for the Measure A program to remain open until the full funding availability was awarded.

Since then, two additional applications were received, including from Care Connexus and U.S. Vets. Care Connexus is a non-profit organization providing adult day care services, specializing in the care of low-income, disabled and frail elderly persons and is requesting \$644,384 for operating funding. U.S. Vets is a non-profit organization providing services to at risk veterans and is requesting \$333,962 for operating funding. Staff has evaluated these applications based on the approved program guidelines and recommends the approval of both projects totaling \$978,346, for a total Measure A Specialized Transit program amount of \$10,923,595 (Attachment 1). After these awards, a total of \$2,203,405 will still be available (Table 1).

Table 1. Summary of Available Funding

| <b>Fiscal Years 2024/25 – 2026/27</b> |                      |
|---------------------------------------|----------------------|
| Fiscal Year                           | Total                |
| FY 2024/25                            | \$ 4,289,000         |
| FY 2025/26                            | 4,375,000            |
| FY 2026/27                            | 4,463,000            |
| <b>Total Revenue</b>                  | <b>\$ 13,127,000</b> |
| Original Awarded                      | 9,945,249            |
| <b>Remaining</b>                      | <b>\$ 3,181,751</b>  |
| Amendment 1                           | 978,346              |
| <b>Revised Remaining</b>              | <b>\$ 2,203,405</b>  |

If additional applications are received, staff will return to the Commission and recommend funding up to the amount available.


**FISCAL IMPACT:**

The addition of these two projects to the program will not require a budget adjustment as sufficient funds were included in the approved FY 2024/25 budget.

Measure A Specialized Transit Program funds recommended in Amendment 1 are included in the FY 2024/25 budget in the amount of \$4,289,000. Funding for years FY 2025/26 and FY 2026/27 will be included in the budget process. Table 2 below shows the breakdown of the current three-year call for projects funding by fiscal year.

Table 2. Breakdown of funding type by Fiscal Year

| Fiscal Year  | Operating            | Capital           | Unallocated         | Total                |
|--------------|----------------------|-------------------|---------------------|----------------------|
| FY 2024/25   | \$ 3,364,178         | \$ 244,262        | \$ 680,560          | \$ 4,289,000         |
| FY 2025/26   | 3,540,780            | 12,500            | 821,720             | 4,375,000            |
| FY 2026/27   | 3,749,375            | 12,500            | 701,125             | 4,463,000            |
| <b>Total</b> | <b>\$ 10,654,333</b> | <b>\$ 269,262</b> | <b>\$ 2,203,405</b> | <b>\$ 13,127,000</b> |

| Financial Information       |  |       |                         |         |                            |
|-----------------------------|--|-------|-------------------------|---------|----------------------------|
| In Fiscal Year Budget:      | Yes  | Year: | FY2024/25<br>FY2025/26+ | Amount: | \$4,289,000<br>\$8,838,000 |
| Source of Funds:            | 2009 Measure A Western County<br>Specialized Transit   |       | Budget Adjustment:      |         | No                         |
| GL/Project Accounting No.:  | Operating and Capital (allocated) total:<br>260 26 86101 \$978,346 Specialized Transit Operating Amendment 1<br>260 26 86101 \$9,675,987 Specialized Transit Operating Original<br>260 26 86102 \$269,262 Specialized Transit Capital Original |       |                         |         |                            |
| Fiscal Procedures Approved: |    |       |                         | Date:   | 08/15/2024                 |

Attachment: FY 2024/25–2026/27 Measure A Specialized Transit Award Recommendations Including Amendment 1

|  |   |          |   |     |   |
|--|---|----------|---|-----|---|
| <i>Approved by the Western Riverside County Programs and Projects Committee on<br/>August 26, 2024</i> |   |          |   |     |   |
| In Favor:  | 9 | Abstain: | 0 | No: | 0 |



**FY 2024/25 - FY 2026/27 PROJECT RECOMMENDATIONS - Amendment 1**

| 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 | \$ 229,455                | \$ 151,441                   | \$ 78,014           |
| 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  | \$ 383,278                | \$ 229,967                   | \$ 153,312          |
| 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                            | \$ 117,090                | \$ 77,280                    | \$ 39,810           |
| 16 Independent Living Partnership*   | Capital - Equipment                    | Software Upgrade   | \$ 76,762                 | \$ 76,762                    | \$ -                |
| 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 - One Passenger Van                                | \$ 100,000                | \$ 100,000                   | \$ -                |
| 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>\$ 20,634,360</b>      | <b>\$ 10,923,595</b>         | <b>\$ 9,698,455</b> |
| Operating Total                      |  |  | \$ 18,790,257             | \$ 10,654,333                | \$ 9,101,960        |
| Capital Total                        |  |  | \$ 361,762                | \$ 269,262                   | \$ 92,500           |

\* Transportation-only organization reduced match was requested and approved

**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>    |