

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	May 11, 2011
TO:	Riverside County Transportation Commission
FROM:	Western Riverside County Programs and Projects Committee Patti Castillo, Capital Projects Manager
THROUGH:	Anne Mayer, Executive Director
SUBJECT:	Amendment to Transportation Uniform Mitigation Fee Regional Arterial Agreement for the Railroad Canyon at Interstate 15 Interchange Project in the City of Lake Elsinore

WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE AND STAFF RECOMMENDATION:

This item is for the Commission to:

- 1) Approve Agreement No. 10-72-016-01, Amendment No. 1 to the Transportation Uniform Mitigation Fee (TUMF) Regional Arterial Improvements Agreement No. 10-72-016-00, for the Railroad Canyon/ Interstate 15 interchange with the city of Lake Elsinore (Lake Elsinore) in order to authorize staff to complete the project approval and environmental document (PA&ED) phase with the remaining \$52,000 of the \$1 million TUMF funds allocated to this phase and to increase the PA&ED phase funding amount by \$206,000 to \$1,206,000;
- 2) Approve Assignment and Assumption Agreement No. 11-31-107-00 with Lake Elsinore to facilitate the assignment of the Lake Elsinore agreement (No. 1877) with SC Engineering to continue and complete the PA&ED services associated with the I-15/Railroad Canyon interchange project in the amount of \$192,000, plus a contingency amount of \$32,000, for a total amount not to exceed \$224,000;
- 3) Approve Agreement No 11-31-107-01, Amendment No. 1 to Agreement No. 11-31-107-00, to facilitate changes to the Lake Elsinore agreement that are necessary to ensure that the language included therein is consistent with the Commission's standard professional services agreements;
- 4) Authorize the Chair, pursuant to legal counsel review, to execute the agreements on behalf of the Commission; and
- 5) Authorize the Executive Director, pursuant to legal counsel review, to execute agreements with Caltrans to reflect non-funding changes related to the project on the behalf of the Commission.

BACKGROUND INFORMATION:

Lake Elsinore initiated the I-15/Railroad Canyon interchange project to improve safety, circulation, and level of service (LOS) of the interchange. The city contracted with SC Engineering to perform the various duties involved in the PA&ED phase such as prepare the project report, perform environmental studies, and prepare the environmental document. In December 2008, the city entered into a project development cooperative agreement with Caltrans. In February 2010, the Commission entered into Agreement No. 10-72-016-00 with Lake Elsinore to provide \$1 million of TUMF Regional Arterial program funds for the project's PA&ED phase. The city has now requested that the Commission manage the completion of the PA&ED phase given the Commission's experience with delivering state highway projects.

Lake Elsinore has completed 70% of the PA&ED phase. The unexpended balance of Agreement No. 10-72-016-00 is \$52,000. The city is proposing to amend the TUMF agreement allowing the Commission to use the balance of funds to complete the phase.

Staff reviewed the city's proposal and is recommending that the Commission approve this request to complete the PA&ED phase; however, staff estimates that the cost to complete this phase, including estimated Commission staff and other costs (estimated at \$34,000), is \$206,000. These additional funds will be reprogrammed from a future phase, which is supported by a subcommittee of the Technical Advisory Committee. Staff estimates that this phase can be completed in about seven months.

Financial Information					
In Fiscal Year Budget:	Yes N/A	Year:	FY 2010/11 FY 2011/12	Amount:	\$20,000 \$186,000
Source of Funds:	TUMF Regional Arterial			Budget Adjustment:	No N/A
GLA No.:	005104 81101 00000 0000 210 72 81101				
Fiscal Procedures Approved:	<i>Theresa Trevino</i>			Date:	04/13/11

Attachments:

- 1) City of Lake Elsinore TUMF Amendment Request – I-15/Railroad Canyon Interchange Draft Agreement No. 10-72-016-01
- 2) Assignment and Assumption Draft Agreement No. 11-31-107-00
- 3) Draft Professional Services Agreement No. 11-31-107-01

DRAFT

Agreement No. 10-72-016-01

**AMENDMENT NO. 1
TO
AGREEMENT FOR THE FUNDING OF TUMF REGIONAL ARTERIAL IMPROVEMENTS
WITH THE CITY OF LAKE ELSINORE FOR THE RAILROAD CANYON ROAD @ I-15
IMPROVEMENTS**

1. PARTIES AND DATE

This Amendment No. 1 to Agreement No. 10-72-016-00 is made and entered into as of this _____ day of _____, 201__, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("Commission") and the CITY OF LAKE ELSINORE ("City").

2. RECITALS

- 2.1 The Commission and the City have entered into an agreement entitled "Agreement for the Funding of TUMF Regional Arterial Improvements with the City of Lake Elsinore" dated February 4, 2010 (the "Master Agreement"). The Master Agreement provides the terms and conditions, scope of work, schedule and funding amount for the PA&ED phase related to the **Railroad Canyon Road @ I-15 Improvement Project** (hereinafter the "Project"). The Project is more specifically described in Exhibit "B" of the Master Agreement.
- 2.2 The parties now desire to amend the Master Agreement in order to increase the Funding Amount set forth in Section 3.2 of the Master Agreement in response to higher than anticipated costs to complete the PA&ED Phase of work for the project.
- 2.3 The parties further desire to amend the Master Agreement in order to permit the Commission to reimburse itself for all costs associated with development and approval of a Project Approval and Environmental Document (PA&ED) for the project.

3. TERMS

- 3.1 The Recitals set forth above are true and correct and are incorporated into this Amendment by this reference, as though fully set forth herein.
- 3.2 The Funding Amount, as set forth in Section 3.2 of the Master Agreement as amended shall be increased from **One Million Dollars (\$1,000,000)** to **One Million Two Hundred and Six Thousand Dollars (\$1,206,000)** to reflect the addition of funding for the PA&ED phase of work for the project.
- 3.3 Section 3.2 of the Master Agreement, shall be deleted in its entirety and revised to state as follows:
- 3.2 RCTC Funding Amount shall be increased from **One Million Dollars (\$1,000,000)** to **One Million Two Hundred and Six Thousand Dollars (\$1,206,000)**. RCTC hereby agrees to distribute to the City, on the terms and conditions set forth herein, a sum not to exceed **\$948,000**, to be used exclusively for reimbursing the City for eligible work expenses and up to \$258,000 for RCTC to reimburse itself for eligible Work expenses as described herein ("Funding Amount"). The City acknowledges and agrees that the Funding Amount may be less than the actual cost of the Work, and that RCTC shall not contribute TUMF Regional Funds in excess of the Maximum TUMF share for the phase/project identified in ~~Appendix F~~ of the most recently approved Nexus Study. In addition, the City agrees that the funding amount shall be reduced by all costs described in Section 3.4 of this Amendment No 1.
- 3.4 Section 3.2.1 of the Master Agreement shall be amended to include the following additional language.
- The Total Work Cost shall also include the following items: all of RCTC's costs associated with managing the consultant, SC Engineering, and coordination with Caltrans, FHWA and other agencies as required, including work done by the consultant as directed by RCTC.
- 3.5 The Project shall be completed expeditiously, within the term of the Master Agreement.
- 3.6 Except as amended by this Amendment, all provisions of the Master Agreement, including without limitation the indemnity and insurance

provisions, shall remain in full force and effect and shall govern the actions of the parties under this Amendment.

[Signatures on following page]

**SIGNATURE PAGE
TO
AGREEMENT NO. 10-72-016-01**

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

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

CITY OF LAKE ELSINORE

By: _____
Anne Mayer
Executive Director

By: _____
Amy Bhutta
Mayor

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Best, Best & Krieger LLP
General Counsel

By: _____
Barbara Liebold
City Attorney

EXHIBIT "A"

SCOPE OF WORK, FUNDING AND TIMETABLE

SCOPE OF WORK: The PA&ED Phase of work (Preliminary Engineering and Environmental Clearance) for the reconstruction of the Railroad Canyon Rd @ I-15 Interchange.

FUNDING:

PHASE	TUMF	LOCAL	TOTAL
PA&ED	\$1,187,000	\$0	\$1,187,000
TOTAL	\$1,187,000	N/A	\$1,187,000

TIMETABLE:

PA&ED Start January, 2009 Complete January, 2012

Agreement No. 11-31-107-00

-Draft-

**ASSIGNMENT AND ASSUMPTION OF A
PROFESSIONAL SERVICES AGREEMENT REGARDING THE RAILROAD
CANYON ROAD/DIAMOND DRIVE INTERCHANGE**

1. Parties and Date

This Assignment and Assumption Agreement of Railroad License Agreement 05-51-934 (“Assignment”) is made and entered into this ____ of _____, 2011, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION, a public agency existing under the laws of the State of California (“Commission” or “Assignee”), and the CITY OF LAKE ELSINORE, a municipal corporation (“City” or “Assignor”). The Assignor and Assignee are sometimes referred to individually as “Party” and collectively as “Parties”.

2. Recitals

2.1 On or about December 1, 2005, Sal Chavez, a sole proprietor dba SC Engineering (“Consultant”) and Assignor entered into a certain Professional Services Agreement for the preparation of a Project Report and Draft Environmental Document for the Railroad Canyon Road/Diamond Drive Interchange at the I-15 Freeway (“Agreement”). A copy of the Agreement is attached hereto as Exhibit “A”.

2.2 Assignor desires to assign to Assignee all of Assignor’s rights and interests in and to the Agreement and to delegate to Assignee all of Assignor’s duties and obligations under the Agreement. Assignee desires to accept the assignment of such rights and interests and assume such obligations under the Agreement, provided that Consultant has executed that certain Amendment No. 1 to the Agreement (“Amendment No. 1”) to be entered into by and between Assignee and Consultant, in the form approved by Assignee. Amendment No. 1 modifies the Agreement to conform to Assignee’s minimum requirements.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and terms and conditions contained herein, the parties hereby agree as follows:

3. Terms

3.1 Incorporation of Recitals and Exhibits. Exhibit “A” and the above Recitals constitute a material part of this Assignment and are incorporated by reference as though fully set forth herein.

3.2 Assignment. Assignor hereby assigns all of its rights and delegates all of its duties and obligations under the Agreement to Assignee. Notwithstanding the foregoing, Assignor shall indemnify, defend, protect and hold harmless Assignee from any loss, liability, claim, cause of action, cost or expense (including reasonable attorney’s fees) that Assignee may

incur with respect to the Agreement arising from facts or events occurring prior to the date of such assignment.

3.3 Assumption. Provided that Consultant has executed Amendment No. 1, in such form as reasonably required by Assignee, Assignee hereby assumes all of the rights and agrees to perform and discharge all of the duties and obligations of Assignor under the Agreement, as amended by Amendment No. 1. Assignee's rights and obligations hereunder shall not be effective unless and until: (i) this Agreement has been executed by the Parties, and (ii) Consultant has executed Amendment No.1.

3.4 Modification. This Assignment may be amended or modified only by a written instrument executed by the Assignor and Assignee.

3.5 Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the parties' respective successors and assigns.

3.6 Governing Law. This Assignment shall be governed and construed in accordance with the laws of the State of California.

3.7 Entire Agreement. This Assignment and the Exhibit referenced herein constitute the entire agreement between the Parties with respect to the amendment, the assignment, and the assumption of the Agreement, and supersedes all prior agreements and understandings between the parties with respect thereto.

3.8 Attorney's Fees. In the event a dispute arises concerning the meaning or interpretation of any provision of this Assignment, the Party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees.

3.9 Counterparts. This Assignment may be executed in one or more counterparts, each of which shall constitute an original, and all of which together shall constitute one in the same agreement.

3.10 Representations and Warranties. Assignor and Assignee represent and warrant that as of the date first specified above, the execution and delivery of this Assignment is a legal, valid, and binding obligation and enforceable against Assignor and Assignee.

3.11 Force and Effect. Except as set forth herein, all provisions of the Agreement, as amended, shall remain in full force and effect, and shall govern the actions of the parties hereto.

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

[signatures on following page]

**SIGNATURE PAGE TO ASSIGNMENT AND ASSUMPTION OF A
PROFESSIONAL SERVICES AGREEMENT REGARDING THE RAILROAD
CANYON ROAD/DIAMOND DRIVE INTERCHANGE**

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

CITY OF LAKE ELSINORE

By: _____

By: _____

Its: _____

Its: _____

ATTEST

By: _____
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM

By: _____
Best Best & Krieger LLP
Counsel to the Riverside
County Transportation Commission

By: _____
City Attorney

EXHIBIT “A”

**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN CITY OF LAKE ELSINORE
AND SC ENGINEERING**

[ATTACHED BEHIND THIS PAGE]

Agreement No. 11-31-107-01

Draft

**AMENDMENT NO. 1
TO
AGREEMENT WITH SC ENGINEERING
FOR PROFESSIONAL SERVICES
FOR
THE RAILROAD CANYON/DIAMOND DRIVE INTERCHANGE
AT THE I-15 FREEWAY**

1. Parties and Date

This Amendment No. 1 is made and entered into this _____ day of _____, 2011 by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("Commission") and REYES S. CHAVEZ, PE, a sole proprietor, dba SC ENGINEERING ("Consultant"). The Commission and Consultant are sometimes referred to herein individually as "Party" and collectively as the "Parties."

2. Recitals

- 2.1 The City of Lake Elsinore ("City") and SC Engineering entered into an Agreement For Professional Services, dated December 1, 2005, for the purpose of retaining Consultant to prepare a Project Report and Draft Environmental Document necessary for the Railroad Canyon Road/Diamond Drive Interchange at the I-15 Freeway (the "Master Agreement").
- 2.2 The Commission and City entered into an Assignment and Assumption Agreement ("Assignment"), Commission Agreement No. _____, for the purpose of assigning to the Commission all of the City's rights and interests in and to the Master Agreement, except as amended by this Amendment No. 1. A copy of the Assignment is on file at the offices of the Commission.
- 2.3 SC Engineering is now operated as a sole proprietorship by Reyes S. Chavez. Reyes S. Chavez, a sole proprietor, dba SC Engineering ("Consultant") intends to assume all rights, obligations and liabilities of SC Engineering under the Master Agreement, as heretofore amended and as amended herein.

- 2.4 The Parties now desire to effectuate the assumption of rights and obligations specified above in Sections 2.2 and 2.3, and to amend the Master Agreement in order to revise certain terms.

3. TERMS

- 3.1 The recitals set forth above are true and correct and are incorporated into this Amendment No. 1 as though fully set forth herein.
- 3.2 This Amendment No. 1 shall not be effective unless and until the Assignment has been fully executed by City and the Commission.
- 3.3 Consultant hereby expressly assumes all rights, obligations and liabilities of SC Engineering as set forth under the Master Agreement, as amended by this Amendment No. 1. All references to "Consultant" in the Master Agreement shall be interpreted as referring to Reyes S. Chavez, PE, a sole proprietor, dba SC Engineering.
- 3.4 The Commission hereby expressly assumes all rights, obligations and liabilities of City as set forth under the Master Agreement, as amended by this Amendment No. 1. All references to "City" in the Master Agreement shall be interpreted as referring to Commission.
- 3.5 The Indemnity provision set forth in Section 14 of the Master Agreement shall be amended and replaced in its entirety to read as follows:

Consultant shall indemnify and hold the Commission, its directors, officials, officers, agents, consultants, employees and volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to alleged negligent acts, omissions or willful misconduct of the 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 all consequential damages, 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 the Commission, its directors,

officials, officers, agents, consultants, employees and volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the Commission or its directors, officials, officers, agents, consultants, employees and volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse the Commission and its directors, officials, officers, agents, consultants, employees and 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 the Commission or its directors, officials, officers, agents, consultants, employees and volunteers. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. This Section shall survive any expiration or termination of this Agreement.

- 3.6 The General Liability Coverage as set forth in Section 15(a)(ii) of the Master Agreement shall be amended to read as follows:

Consultant shall maintain commercial general liability insurance in an amount no less than TWO MILLION Dollars (\$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.

- 3.7 The following Safety terms shall be added to the Master Agreement after the Insurance Requirements provision (Section 15 of the Master Agreement) and before the Notices provision (Section 16 of the Master Agreement):

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.

- 3.8 Compensation, as that term is defined in Section 3 of the Master Agreement, shall be amended to include the following:

Consultant shall not be reimbursed for any expenses unless authorized in writing by Commission.

- 3.9 Licensing of Intellectual Property, as that term is defined in Section 7(a) of the Master Agreement, shall be amended to read as follows:

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.

Commission further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any

and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement

- 3.10 The following terms shall be added after the Equal Opportunity Employment provision of the Master Agreement with the appropriate Section number heading:

Prevailing Wages. By its execution of this Agreement, Consultant certified that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. The Commission shall provide Consultant with a copy of the prevailing rate of per diem wages in effect at the commencement of this Agreement. 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.

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.

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.

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.

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

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.

- 3.11 Except as amended by this Amendment No. 1, all provisions of the Master Agreement shall remain in full force and effect and shall govern the actions of the parties under this Amendment.

[Signatures on following page]

**SIGNATURE PAGE
TO
AGREEMENT NO. _____**

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

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

**REYES S. CHAVEZ, PE,
DBA SC ENGINEERING**

By: _____
Anne Mayer, Executive Director

Signature

Name

Title

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
General Counsel

DRAFT

Agreement No. 10-72-016-01

**AMENDMENT NO. 1
TO
AGREEMENT FOR THE FUNDING OF TUMF REGIONAL ARTERIAL IMPROVEMENTS
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2. RECITALS

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- 2.3 The parties further desire to amend the Master Agreement in order to permit the Commission to reimburse itself for all costs associated with development and approval of a Project Approval and Environmental Document (PA&ED) for the project.

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**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

CITY OF LAKE ELSINORE

By: _____
Anne Mayer
Executive Director

By: _____
Amy Bhutta
Mayor

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Best, Best & Krieger LLP
General Counsel

By: _____
Barbara Liebold
City Attorney

EXHIBIT "A"

SCOPE OF WORK, FUNDING AND TIMETABLE

SCOPE OF WORK: The PA&ED Phase of work (Preliminary Engineering and Environmental Clearance) for the reconstruction of the Railroad Canyon Rd @ I-15 Interchange.

FUNDING:

PHASE	TUMF	LOCAL	TOTAL
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TOTAL	\$1,187,000	N/A	\$1,187,000

TIMETABLE:

PA&ED Start January, 2009 Complete January, 2012

Agreement No. 11-31-107-00

-Draft-

**ASSIGNMENT AND ASSUMPTION OF A
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CANYON ROAD/DIAMOND DRIVE INTERCHANGE**

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2. Recitals

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2.2 Assignor desires to assign to Assignee all of Assignor’s rights and interests in and to the Agreement and to delegate to Assignee all of Assignor’s duties and obligations under the Agreement. Assignee desires to accept the assignment of such rights and interests and assume such obligations under the Agreement, provided that Consultant has executed that certain Amendment No. 1 to the Agreement (“Amendment No. 1”) to be entered into by and between Assignee and Consultant, in the form approved by Assignee. Amendment No. 1 modifies the Agreement to conform to Assignee’s minimum requirements.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and terms and conditions contained herein, the parties hereby agree as follows:

3. Terms

3.1 Incorporation of Recitals and Exhibits. Exhibit “A” and the above Recitals constitute a material part of this Assignment and are incorporated by reference as though fully set forth herein.

3.2 Assignment. Assignor hereby assigns all of its rights and delegates all of its duties and obligations under the Agreement to Assignee. Notwithstanding the foregoing, Assignor shall indemnify, defend, protect and hold harmless Assignee from any loss, liability, claim, cause of action, cost or expense (including reasonable attorney’s fees) that Assignee may

incur with respect to the Agreement arising from facts or events occurring prior to the date of such assignment.

3.3 Assumption. Provided that Consultant has executed Amendment No. 1, in such form as reasonably required by Assignee, Assignee hereby assumes all of the rights and agrees to perform and discharge all of the duties and obligations of Assignor under the Agreement, as amended by Amendment No. 1. Assignee's rights and obligations hereunder shall not be effective unless and until: (i) this Agreement has been executed by the Parties, and (ii) Consultant has executed Amendment No.1.

3.4 Modification. This Assignment may be amended or modified only by a written instrument executed by the Assignor and Assignee.

3.5 Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the parties' respective successors and assigns.

3.6 Governing Law. This Assignment shall be governed and construed in accordance with the laws of the State of California.

3.7 Entire Agreement. This Assignment and the Exhibit referenced herein constitute the entire agreement between the Parties with respect to the amendment, the assignment, and the assumption of the Agreement, and supersedes all prior agreements and understandings between the parties with respect thereto.

3.8 Attorney's Fees. In the event a dispute arises concerning the meaning or interpretation of any provision of this Assignment, the Party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees.

3.9 Counterparts. This Assignment may be executed in one or more counterparts, each of which shall constitute an original, and all of which together shall constitute one in the same agreement.

3.10 Representations and Warranties. Assignor and Assignee represent and warrant that as of the date first specified above, the execution and delivery of this Assignment is a legal, valid, and binding obligation and enforceable against Assignor and Assignee.

3.11 Force and Effect. Except as set forth herein, all provisions of the Agreement, as amended, shall remain in full force and effect, and shall govern the actions of the parties hereto.

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

[signatures on following page]

**SIGNATURE PAGE TO ASSIGNMENT AND ASSUMPTION OF A
PROFESSIONAL SERVICES AGREEMENT REGARDING THE RAILROAD
CANYON ROAD/DIAMOND DRIVE INTERCHANGE**

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

CITY OF LAKE ELSINORE

By: _____

By: _____

Its: _____

Its: _____

ATTEST

By: _____
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM

By: _____
Best Best & Krieger LLP
Counsel to the Riverside
County Transportation Commission

By: _____
City Attorney

EXHIBIT “A”

**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN CITY OF LAKE ELSINORE
AND SC ENGINEERING**

[ATTACHED BEHIND THIS PAGE]

Exhibit A

Agreement No. 11-31-107-01

Draft

**AMENDMENT NO. 1
TO
AGREEMENT WITH SC ENGINEERING
FOR PROFESSIONAL SERVICES
FOR
THE RAILROAD CANYON/DIAMOND DRIVE INTERCHANGE
AT THE I-15 FREEWAY**

1. Parties and Date

This Amendment No. 1 is made and entered into this _____ day of _____, 2011 by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("Commission") and REYES S. CHAVEZ, PE, a sole proprietor, dba SC ENGINEERING ("Consultant"). The Commission and Consultant are sometimes referred to herein individually as "Party" and collectively as the "Parties."

2. Recitals

- 2.1 The City of Lake Elsinore ("City") and SC Engineering entered into an Agreement For Professional Services, dated December 1, 2005, for the purpose of retaining Consultant to prepare a Project Report and Draft Environmental Document necessary for the Railroad Canyon Road/Diamond Drive Interchange at the I-15 Freeway (the "Master Agreement").
- 2.2 The Commission and City entered into an Assignment and Assumption Agreement ("Assignment"), Commission Agreement No. _____, for the purpose of assigning to the Commission all of the City's rights and interests in and to the Master Agreement, except as amended by this Amendment No. 1. A copy of the Assignment is on file at the offices of the Commission.
- 2.3 SC Engineering is now operated as a sole proprietorship by Reyes S. Chavez. Reyes S. Chavez, a sole proprietor, dba SC Engineering ("Consultant") intends to assume all rights, obligations and liabilities of SC Engineering under the Master Agreement, as heretofore amended and as amended herein.

- 2.4 The Parties now desire to effectuate the assumption of rights and obligations specified above in Sections 2.2 and 2.3, and to amend the Master Agreement in order to revise certain terms.

3. TERMS

- 3.1 The recitals set forth above are true and correct and are incorporated into this Amendment No. 1 as though fully set forth herein.
- 3.2 This Amendment No. 1 shall not be effective unless and until the Assignment has been fully executed by City and the Commission.
- 3.3 Consultant hereby expressly assumes all rights, obligations and liabilities of SC Engineering as set forth under the Master Agreement, as amended by this Amendment No. 1. All references to "Consultant" in the Master Agreement shall be interpreted as referring to Reyes S. Chavez, PE, a sole proprietor, dba SC Engineering.
- 3.4 The Commission hereby expressly assumes all rights, obligations and liabilities of City as set forth under the Master Agreement, as amended by this Amendment No. 1. All references to "City" in the Master Agreement shall be interpreted as referring to Commission.
- 3.5 The Indemnity provision set forth in Section 14 of the Master Agreement shall be amended and replaced in its entirety to read as follows:

Consultant shall indemnify and hold the Commission, its directors, officials, officers, agents, consultants, employees and volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to alleged negligent acts, omissions or willful misconduct of the 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 all consequential damages, 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 the Commission, its directors,

officials, officers, agents, consultants, employees and volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the Commission or its directors, officials, officers, agents, consultants, employees and volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse the Commission and its directors, officials, officers, agents, consultants, employees and 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 the Commission or its directors, officials, officers, agents, consultants, employees and volunteers. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. This Section shall survive any expiration or termination of this Agreement.

- 3.6 The General Liability Coverage as set forth in Section 15(a)(ii) of the Master Agreement shall be amended to read as follows:

Consultant shall maintain commercial general liability insurance in an amount no less than TWO MILLION Dollars (\$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.

- 3.7 The following Safety terms shall be added to the Master Agreement after the Insurance Requirements provision (Section 15 of the Master Agreement) and before the Notices provision (Section 16 of the Master Agreement):

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.

- 3.8 Compensation, as that term is defined in Section 3 of the Master Agreement, shall be amended to include the following:

Consultant shall not be reimbursed for any expenses unless authorized in writing by Commission.

- 3.9 Licensing of Intellectual Property, as that term is defined in Section 7(a) of the Master Agreement, shall be amended to read as follows:

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.

Commission further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any

and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement

- 3.10 The following terms shall be added after the Equal Opportunity Employment provision of the Master Agreement with the appropriate Section number heading:

Prevailing Wages. By its execution of this Agreement, Consultant certified that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. The Commission shall provide Consultant with a copy of the prevailing rate of per diem wages in effect at the commencement of this Agreement. 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.

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.

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.

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.

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

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.

- 3.11 Except as amended by this Amendment No. 1, all provisions of the Master Agreement shall remain in full force and effect and shall govern the actions of the parties under this Amendment.

[Signatures on following page]

**SIGNATURE PAGE
TO
AGREEMENT NO. _____**

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

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

**REYES S. CHAVEZ, PE,
DBA SC ENGINEERING**

By: _____
Anne Mayer, Executive Director

Signature

Name

Title

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
General Counsel