



MEETING AGENDA

Western Riverside County Programs and Projects Committee

Time: 1:30 p.m.
Date: April 24, 2023
Location: BOARD ROOM - County of Riverside Administration Center
4080 Lemon St, First Floor, Riverside, CA 92501
TELECONFERENCE SITE
LARGE CONFERENCE ROOM – French Valley Airport
37600 Sky Canyon Drive, Murrieta, CA 92563

COMMITTEE MEMBERS

Brian Berkson, **Chair**/Armando Carmona, City of Jurupa Valley
Wes Speake, **Vice Chair** / Jim Steiner, City of Corona
Sheri Flynn / Rick Minjares, City of Banning
Clint Lorimore / Todd Rigby, City of Eastvale
Linda Krupa / Malcolm Lilienthal, City of Hemet
Bill Zimmerman / Dean Deines, City of Menifee
Berwin Hanna / Katherine Aleman, City of Norco
Michael Vargas / Rita Rogers, City of Perris
Chuck Conder / Patricia Lock Dawson, City of Riverside
Joseph Morabito, / Ashlee DePhillippo, City of Wildomar
Kevin Jeffries, County of Riverside, District I
Karen Spiegel, County of Riverside, District II

STAFF

Anne Mayer, Executive Director
Aaron Hake, Deputy Executive Director

AREAS OF RESPONSIBILITY

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

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

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

www.rctc.org

AGENDA*

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

1:30 p.m.

Monday, April 24, 2023

BOARD ROOM

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

TELECONFERENCE SITE

LARGE CONFERENCE ROOM

**French Valley Airport
37600 Sky Canyon Drive
Murrieta, California**

In compliance with the Brown Act and Government Code Section 54957.5, agenda materials distributed 72 hours prior to the meeting, which are public records relating to open session agenda items, will be available for inspection by members of the public prior to the meeting at the Commission office, 4080 Lemon Street, Third Floor, Riverside, CA, and on the Commission's website, www.rctc.org.

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

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PLEDGE OF ALLEGIANCE**

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

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

5. **ADDITIONS/REVISIONS** *(The Committee may add an item to the Agenda after making a finding that there is a need to take immediate action on the item and that the item came to the attention of the Committee subsequent to the posting of the agenda. An action adding an item to the agenda requires 2/3 vote of the Committee. If there are less than 2/3 of the Committee members present, adding an item to the agenda requires a unanimous vote. Added items will be placed for discussion at the end of the agenda.)*
6. **CONSENT CALENDAR** - *All matters on the Consent Calendar will be approved in a single motion unless a Commissioner(s) requests separate action on specific item(s). Items pulled from the Consent Calendar will be placed for discussion at the end of the agenda.*

6A. **APPROVAL OF MINUTES – MARCH 27, 2023**

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7. **AGREEMENT FOR COMPLETION OF PROJECT APPROVAL/ENVIRONMENTAL DOCUMENT FOR THE STATE ROUTE 91 EASTBOUND CORRIDOR OPERATIONS PROJECT**

Page 12

Overview

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

- 1) Award Agreement No. 23-31-041-00 with Parsons Transportation Group, Inc. (Parsons) to provide project approval/environmental document (PA/ED) for the State Route 91 Eastbound Corridor Operations Project (ECOP) in the amount of \$3,464,514, plus a contingency amount of \$346,451, for a total amount not to exceed \$3,810,965;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, execute the agreement on behalf of the Commission; and
- 3) Authorize the Executive Director, or designee, to approve contingency work up to the total not to exceed amount as required for these services.

8. AGREEMENT FOR ON-CALL RAILWAY FLAGGING SERVICES FOR THE RIVERSIDE COUNTY TRANSPORTATION COMMISSION'S HIGHWAY AND EXPRESSWAY PROJECTS ENCROACHING IN BURLINGTON NORTHERN SANTA FE

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Overview

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

- 1) Award Agreement No. 23-31-061-00 to RailPros, Inc., to provide on-call Railway Flagging Services for Riverside County Transportation Commission's (RCTC) current and future highway and/or expressway projects or activities of the Commission within the right of way owned or operated by Burlington Northern Santa Fe (BNSF), for a three-year term, and one, two-year option to extend the agreement, in an amount not to exceed \$2,400,000; and
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement and optional two-year term on behalf of the Commission.

9. APPROVAL OF VANCLUB VANPOOL PROGRAM SUBSIDY INCREASE AND AMENDMENTS TO LEASING VENDOR AGREEMENTS

Page 108

Overview

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

- 1) Approve VanClub program vanpool subsidy increase from \$400 a month per vanpool to \$600 a month per vanpool, effective July 1, 2023;
- 2) Approve Agreement No. 21-41-021-01, Amendment No. 1 to Agreement No. 21-41-021-00 with Airport Van Rental (AVR Vanpool) to revise the monthly subsidy amount to \$600, effective July 1, 2023, with no change to the term or agreement amount;
- 3) Approve Agreement No. 18-41-038-02, Amendment No. 2 to Agreement No. 18-41-038-00 with California Vanpool Authority (CalVans) to revise the monthly subsidy amount to \$600, effective July 1, 2023, with no change to the term or agreement amount;
- 4) Approve Agreement No. 18-45-063-04, Amendment No. 4 to Agreement No. 18-45-063-00 with Commute with Enterprise (Enterprise) to revise the monthly subsidy amount to \$600, effective July 1, 2023, with no change to the term or agreement amount; and
- 5) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements on behalf of the Commission.

10. AGREEMENT FOR ELEVATOR MAINTENANCE, INSPECTION AND REPAIR SERVICES

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Overview

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

- 1) Approve Agreement No. 23-24-046-00 with Amtech Elevator Services to provide elevator maintenance, inspection and repair services for a three-year term, and one, two-year option to extend the agreement, in the amount of \$400,000, plus a contingency amount of \$50,000, for a total amount not to exceed \$450,000; and
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to finalize and execute the agreement, on behalf of the Commission.

11. EXECUTIVE DIRECTOR REPORT

12. COMMISSIONER COMMENTS

Overview

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

13. ADJOURNMENT

The next Western Riverside County Programs and Projects Committee meeting is scheduled to be held at **1:30 p.m., Monday, May 22, 2023.**

AGENDA ITEM 6A

MINUTES

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE

Monday, March 27, 2023

MINUTES

1. CALL TO ORDER

The meeting of the Western Riverside County Programs and Projects Committee was called to order by Vice Chair Wes Speake at 1:30 p.m. Teleconference Site: Large Conference Room, French Valley Airport, 37600 Sky Canyon Drive, Murrieta, CA.

2. ROLL CALL

Members/Alternates Present

Katherine Aleman
Brian Berkson*
Chuck Conder
Sheri Flynn
Kevin Jeffries
Linda Krupa**
Clint Lorimore
Joseph Morabito
Wes Speake
Karen Spiegel
Bill Zimmerman**

Members Absent

Michael Vargas

*Joined the meeting after it was called to order.

**Joined the meeting at the French Valley teleconference location.

3. PLEDGE OF ALLEGIANCE

Commissioner Karen Spiegel led the Western Riverside County Programs and Projects Committee in a flag salute.

4. PUBLIC COMMENTS

Arnold San Miguel, Southern California Association of Governments (SCAG), announced that registration is open for the SCAG Regional Conference and General Assembly being held on May 4-5, 2023, at the JW Marriot Desert Hot Springs Resort & Spa in Palm Desert. Also, every four years, SCAG updates its visionary plan for the future of the region, which is called Connect SoCal. This plan process is underway, and SCAG would like to hear from everyone. The 2024 update of the plan will consider the needs of their

diverse population and expected challenges due to climate change. Some of the workshops that are in the Riverside and San Bernardino County areas include: April 13 from 9:00 a.m. – 11:00 a.m. and 12:00 p.m. – 2:00 p.m. at the Historic Santa Fe Depot Tile Room; May 2 from 12:00 p.m. – 3:00 p.m. and 4:00 p.m. – 6:00 p.m. at the UC Riverside, Palm Desert, Rooms B114 and B117 and then on May 3 at the same location from 9:00 a.m. – 11:00 a.m.; May 5 from 5:00 p.m. – 8:00 p.m. at the Connect SoCal pop-up at Temecula Rod Run at Temecula Community Services; and May 8 from 12:00 p.m. – 3:00 p.m. at the Anthony Munoz Community Center in Ontario.

5. ADDITIONS/REVISIONS

There were no additions or revisions to the agenda.

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

6. APPROVAL OF MINUTES – FEBRUARY 27, 2023

7. AGREEMENT WITH THE SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY FOR THE INTERSTATE 15 CROSS-COUNTY TOLL SEGMENT

David Thomas, Project Delivery Director, noted that Sergio Vidal, Chief Financial Officer, and Rick Grebner, Project Manager for Parsons, is available for questions also. He then presented the Interstate 15 Cross-Country Toll Segment with the San Bernardino County Transportation Authority (SBCTA), highlighting the following areas:

- Background information
 - Location: Cantu-Galleano Ranch Road to Foothill Boulevard
 - Scope: Two express lanes in each direction plus auxiliary lanes
 - ✓ Eight miles of Express Lanes extension
 - ✓ Two additional toll segments
 - ✓ \$318 million Project (\$118.7 million SB-1 TCEP Grant)
 - ✓ Ready to list by May 2023
 - ✓ Funding obligated by June 2023
 - I-15 Cross-County Toll Segment
 - ✓ Three miles (two miles in Riverside County)
 - ✓ Southern limit: Cantu-Galleano Ranch Road
 - ✓ Northern limit: Jurupa Street
 - ✓ 2.2 lane-miles of Commission 15 Express Lanes
 - ✓ Identified as the “Assigned Portion”

At this time, Chair Brian Berkson joined the meeting and took over the meeting as Chair.

- Cooperative agreement
 - The Cooperative Agreement establishes cooperation and coordination procedures and sets forth various responsibilities that will be crucial to

ultimately provide for seamless operation of the 15 Express Lanes in San Bernardino and Riverside Counties.

- Other agreements
 - Partial Assignment/Assumption Agreement
 - Second Supplemental Toll Revenue Indenture and Resolution
- Transportation Infrastructure Finance and Innovation Act (TIFIA) due diligence review
- A figure of the 15 Express Lanes access improvements near Cantu-Galleano Ranch Road
- Access improvements near Cantu-Galleano Ranch Road cost summary
- SBCTA reimbursement

Anne Mayer, Executive Director, explained the staff recommendation are the results of more than three years-worth of negotiations between RCTC and SBCTA. She discussed the county line issues for this express lane system and trying to figure out how one or the other agency builds, operates, and maintains an express lane in another county. The solution will allow for a seamless operation of the I-15 Express Lane, it is a partnership between the two counties by RCTC agreeing to sublease this section of the express lanes to SBCTA. It will make the operational and maintenance costs more cost effective and they are made whole financially with the guaranteed reimbursements of toll revenue, so there is no financial impact to RCTC. She noted they came up with a complicated solution, but it is one that will work well for RCTC, SBCTA, and most importantly for the traveling public.

Commissioner Clint Lorimore expressed appreciation to staff for all the hard work that has gone into this. He referred to the operations side of it and asked if SBCTA will be monitoring the tow trucks and the California Highway Patrol crossing the county line.

David Thomas replied yes, everything from Cantu-Galleano Ranch Road north will become under SBCTA's operation including the two miles within Riverside County. He noted per the agreements they will be required to operate in the same fashion RCTC operates so that it is a seamless and consistent operation.

In response to Commissioner Lorimore's clarification about the systems as they had discussed there were different operating systems and communications between them and those issues were resolved, David Thomas replied SBCTA will have a different toll service provider, which is TransCore and RCTC has Kapsch, they are different systems. SBCTA will operate the systems they manage and RCTC will do the same, but to the customer they should not know the difference between the two systems.

Anne Mayer clarified at the beginning SBCTA was proposing to use different methods of identification but now they will be using transponders and a similar toll policy as RCTC.

Commissioner Lorimore stated this has been a long time in the works and appreciated the work that has gone into this.

Commissioner Karen Spiegel stated when talking about the cross over and the way the systems work in the tolls, she asked if SBCTA will be using the same type of toll calculations that RCTC does.

David Thomas replied it is not the same exact method of calculating the toll lanes and he asked for Rick Grebner to respond.

Rick Grebner replied as David Thomas mentioned the toll policies will be the same between the two counties, behind the scenes how they operate maybe slightly different. He noted as Anne Mayer mentioned they will be transponder required and that is the important part across county lines.

In response to Commissioner Spiegel's clarification when David Thomas discussed the changes or improvements if that did not affect the environmental impact report, David Thomas replied SBCTA is doing an environmental revalidation to incorporate and address these changes to the document.

Commissioner Spiegel stated related to all the contracts, she understands the Commission has a great relationship long term with Orange County, if things change in either one of their counties it will be ironclad there will not be any changes in what is going on with the toll policies.

David Thomas replied that is correct, they are protected by these agreements.

Commissioner Spiegel stated she wanted to make sure because other things happen when they are not done properly.

David Thomas replied that legal will make sure of it.

In response to Commissioner Lorimore clarification about the amount of lanes current versus additional, David Thomas replied it is about an 8-mile extension to the north of the 15 miles that RCTC has existing.

Anne Mayer clarified there are two lanes in each direction.

In response to Commissioner Lorimore's question how that relates to the existing lanes on the freeway now in the area that does not have the tolls quite yet, David Thomas replied there are multiple lanes in this vicinity. It widens from three to four lanes between SR-60 and I-10, then narrows back down to three general purpose lanes in each direction at the northern limit of the project near Foothill Boulevard. The project is also adding some auxiliary lanes within those limits also with the project.

Anne Mayer clarified with David Thomas about the northbound direction currently for RCTC's existing as they have two express lanes northbound that reduce to just one and then it all merges in with the existing lanes.

David Thomas replied correct.

Anne Mayer stated and then in the southbound three general purpose lanes going into one express lane opening into two express lanes.

David Thomas replied correct, one lane opens first and then at Cantu-Galleano a second lane opens.

Anne Mayer stated with this project there will be two continuous express lanes the entire way from Cajalco all the way up to the northern limit of the project which is Foothill Boulevard.

In response to Commissioner Lorimore's question if they are adding lanes and not losing general purpose lanes, David Thomas replied they are not losing any general purpose lanes there are an addition of auxiliary lanes at three locations.

Commissioner Zimmerman clarified if they have some confidence on that TIFIA loan that the Commission is going to get consent from the U.S. Department of Transportation as it seems they are cutting it close since they need to have it ready to go by May 2023.

Sergio Vidal replied they have been in constant communication throughout this process in the last 12 months in terms of reaching that consent, it is currently in its final stages of review and approval, and they anticipate receiving that prior to the April Commission meeting.

Chair Berkson stated the offering of the 3+ discount if they have their multi-switchable transponder, but this section of the toll lanes will not be operated by RCTC. He asked if RCTC's discount throughout the County will stretch out to the San Bernardino County portion.

David Thomas replied that it will be under SBCTA's toll policy, which will match RCTC's toll policy, so this is part one of the requirements of the agreement is that SBCTA will match RCTC's same policies.

In response to Chair Berkson's clarification that a toll customer in Riverside County will not see something bizarre as they head that last leg in San Bernardino County, David Thomas replied correct.

Chair Berkson stated many years from now these segments eventually go to Caltrans, and they get possession of them at some point and asked if all these segments will end up becoming Caltrans' property at different stages so many years after they opened.

David Thomas replied SBCTA has their own toll facility agreement with Caltrans with a 50-year lease as well so it will be off by about four years when RCTC's expire and SBCTA will have to deal with that when the time comes.

In response to Commissioner Chuck Conder's question if all the land has been acquired to be able to add the extra lanes, David Thomas replied yes and where SBCTA is adding lanes to the outside for the auxiliary lanes is within Caltrans' existing right of way and that is within San Bernardino County.

In response to Commissioner Conder's question that no land needs to be purchased to slow anything down for right of way, David Thomas replied not that he is aware of.

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

- 1) Approve Agreement No. 23-31-028-00 with the San Bernardino County Transportation Authority (SBCTA) detailing project terms during design and construction phases and operations for the proposed Interstate 15 (I-15) Cross-County Toll Segment (Project);**
- 2) Approve Agreement No. 17-31-002-03 with the California Department of Transportation and SBCTA detailing the assignment to SBCTA of the Commission's rights and obligations to lease, operate, and maintain a portion of the Commission's existing 15 Express Lanes Toll Facility;**
- 3) Approve the Second Supplemental Toll Revenue Indenture to the Master Indenture (I-15 Toll Road) dated July 1, 2017;**
- 4) Adopt Resolution No. 23-001, *"Authorizing the Execution and Delivery of a Supplemental Toll Revenue Indenture in Connection with the Partial Assignment of a Portion of the I-15 Toll Express Lanes and Taking of All Other Actions Necessary in Connection Therewith"*;**
- 5) Authorize the Chair or Executive Director, pursuant to U.S. Department of Transportation (DOT) Transportation Infrastructure Finance and Innovation Act (TIFIA) office consent and Commission bond and legal counsel review, to execute the agreements and other required financing related documents on behalf of the Commission;**
- 6) Authorize the Chair or Executive Director, pursuant to U.S. DOT TIFIA office consent and Commission bond and legal counsel review, to execute an agreement between SBCTA and SBCTA's back-office toll service provider (TSP), and subsequent amendments or new agreements with any successor back-office TSP, to which the Commission will be signatory to ensure that revenues are transferred annually from SBCTA through its back-office TSP to the Commission;**
- 7) Authorize the allocation to SBCTA of approximately \$14 million in federal Congestion Mitigation and Air Quality (CMAQ) funds for design and construction phase costs for 15 Express Lane access improvements near Cantu-Galleano Ranch Road for the Project;**
- 8) Authorize the transfer of \$310,000 in Measure A (Economic Development) funds to the 15 Express Lanes to account for construction impacts related to 15 Express Lanes access improvements near Cantu-Galleano Ranch Road;**

- 9) **Authorize the allocation of a contingency amount not to exceed \$1 million in federal CMAQ funds for 15 Express Lane access improvements near Cantu-Galleano Ranch Road; and**
- 10) **Authorize the Executive Director, or designee, to approve contingency work as may be required for the Project.**

Anne Mayer expressed appreciation to the Commissioners for their support of these items and acknowledged Sergio Vidal, David Thomas, Rick Grebner, Jennifer Crosson, Toll Operations Director, and their teams for not giving up on this. It was difficult to come up with solutions that would make it work financially, politically, and most importantly affectively and efficiently for traveling public. This team constantly came forward with creative ideas they were problem solving and she is proud of the work they did.

Chair Berkson stated that they do appreciate staff's time and help on this as there was definitely not agreement when this first came out between Riverside County and San Bernardino County. This is the first time another county has come into Riverside County to do some kind of operations that RCTC is not doing, and he expressed appreciation that it has finally come together.

8. RIVERSIDE COUNTY TRANSPORTATION COMMISSION FISCAL YEAR 2022/23 SHORT RANGE TRANSIT PLAN AMENDMENTS

Sheldon Peterson, Rail Manager, presented the Riverside County Transportation Commission (RCTC) Fiscal Year 2022/23 Short Range Transit Plan (SRTP) amendments, highlighting the following areas:

- SRTP amendment
 - New funding
 - Proposition 1B Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA)
 - ✓ City of Riverside (City) Special Transportation Services
 - ✓ \$395,275 plus any interest
 - Federal Transit Administration (FTA) Section 5339 Program
 - ✓ \$417,631
 - SRTP additional total amount
 - ✓ \$812,906
- South Perris Parking Lot Project
 - New funding will continue the renovations needed at the South Perris parking lot
 - Replace aging asphalt with new reinforced concrete sections
 - Current photos of the existing South Perris parking lot
 - Photos of the work that has been done on the South Perris parking lot for the first half of the project using PTMISEA funds

In response to Commissioner Zimmerman's clarification if the \$395,000 balance is not used by June 30th the money goes back to the state, Sheldon Peterson replied correct and RCTC already has a bid and costs for this project so they will be able to turn it around extremely quickly.

M/S/C (Speake/Lorimore) to:

- 1) Approve the reprogramming of a principal amount of \$395,275 plus any interest from the city of Riverside's (City) Special Transportation Services Proposition 1B Public Transportation Modernization, Improvement, and Service Enhancement Account (PTIMSEA) to the Commission's South Perris Parking Lot Rehabilitation Project;**
- 2) Approve an allocation of \$417,631 from the Federal Transit Administration (FTA) Section 5339 Program for the South Perris Parking Lot Rehabilitation Project;**
- 3) Approve the budget amendment and changes to the Commission's amended FY 2022/23 Short Range Transit Plan (S RTP) to reflect the above-mentioned funding revisions;**
- 4) Direct staff to submit the federally funded and regionally significant projects to the Southern California Association of Governments for inclusion into the Federal Transportation Improvement Program as needed for the FTA Program of Projects; and**
- 5) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute necessary amended agreements related to these allocations on behalf of the Commission.**

9. MEASURE A SPECIALIZED TRANSIT PROGRAM COVID-19 AND ECONOMIC RELIEF FUNDING

Lorelle Moe-Luna, Multimodal Services Director, presented the Measure A Specialized Transit Program COVID-19 and Economic Relief Funding, highlighting the following:

- Measure A Specialized Transit Program
 - Competitive call for projects every three years
 - Awarded \$9.1 million in 2021 for Fiscal Years 2022/23 – 2023/24
 - Purpose: Specialized transit for older adults, persons with disabilities, and/or those that are most vulnerable and truly needy
 - Goal: Projects that complement existing public transit services with expanded or extended services
- An illustration of all the various specialized transit providers that Measure A benefits
- Specialized Transit challenges
 - Decreased ridership
 - Driver shortages
 - Additional safety protocols
 - Increased fuel and wages

- Higher amounts of thefts
 - Supply chain issues
- Friends of Moreno Valley Senior Center Inc.
 - Volunteer-based non-profit known as (MoVan)
 - Serves seniors 60+ and disabled adults to the Moreno Valley Senior Center and non-emergency medical appointments within a 20-mile radius
 - Awarded \$297,585 for operating
 - Requesting additional \$19,550 for increased driver wages
- Care Connexus Adult Day Services
 - Provides Adult Day Services in Riverside area
 - Transports clients who require curb-to-curb with hand-over to caregiver or door-through-door services
 - Awarded \$799,132 for operating and \$112,500 for capital
 - Requesting additional \$57,704 for capital due to supply chain issues and local match waiver of 27 percent and 24 percent for FY 2022/23 and FY 2023/24, respectively
- Care-A-Van Transit Systems, Inc. (Care-A-Van)
 - Provides door-to-door transportation for low-income individuals primarily in the San Jacinto and Hemet area
 - Most trips for medical, educational, and job training
 - Awarded \$996,884 for operating
 - Requesting an additional \$50,000 due to increased fuel, catalytic converter thefts, and insurance
- Exceed dba Valley Resource Center
 - Provides services to adults with disabilities who attend employment programs and skills training
 - Awarded \$244,860 for operating
 - Requesting an additional \$99,600 for operating due to catalytic converter thefts and increased driver wages
- Summary of the total request
 - Total request of \$226,854
 - Considered overall financial impact and value to the community

Lorelle Moe-Luna noted she is joined by representatives by each of these specialized transit providers in case there are any questions about their services or projects.

In response to Commissioner Karen Spiegel's clarification if there is a reason why Exceed did a FY 2023/24 and the other three were all just FY 2022/23, Lorelle Moe-Luna replied staff did ask the providers how much they will need over the next two years, and these were the amounts they provided. Some of them are also for capital so that is only capital expense that can be accrued this year.

Commissioner Katherine Aleman expressed appreciation for the work the staff did in making sure there were amounts included in the budget to adjust as they go so there is no need to look for extra funds. She stated as an elected official these are the programs

that they like to fund they are a lifeline to people and there are volunteers out there moving people around working with folks that are most in need. She then made the motion to approve staff recommendation.

M/S/C (Aleman/Spiegel) to:

- 1) Amend Agreement No. 21-26-096-00 with Friends of Moreno Valley Senior Center, Inc. for an additional \$19,550 of Measure A Specialized Transit funds to supplement impacts from COVID-19 and economic conditions;**
- 2) Amend Agreement No. 21-26-077-00 with Care Connexus for an additional \$57,704 of Measure A Specialized Transit funds to supplement impacts from the COVID-19 pandemic and economic conditions;**
- 3) Amend Agreement No. 21-26-076-00 with Care-A-Van for an additional \$50,000 of Measure A Specialized Transit funds to supplement impacts from the COVID-19 pandemic and economic conditions;**
- 4) Amend Agreement No. 21-026-087-00 with EXCEED dba Valley Resource Center for an additional \$99,600 of Measure A Specialized Transit funds to supplement impacts from the COVID-19 pandemic and economic conditions; and**
- 5) Authorize Executive Director, or designee, to approve a temporary waiver of the Measure A Specialized Transit Program match requirement of 34 percent as needed for all recipients in Fiscal Years 2022/23 and 2023/24.**

10. EXECUTIVE DIRECTOR REPORT

There were no comments from the Executive Director.

11. COMMISSIONER COMMENTS

There were no Commissioner comments.

12. ADJOURNMENT

There being no further business for consideration by the Western Riverside County Programs and Projects Committee, the meeting was at 2:20 p.m.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Lisa Mobley', with a stylized flourish extending to the right.

Lisa Mobley
Administrative Services Director/
Clerk of the Board

AGENDA ITEM 7

<i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i>	
DATE:	April 24, 2023
TO:	Western Riverside County Programs and Projects Committee
FROM:	Sri Srirajan, Senior Capital Projects Manager
THROUGH:	David Thomas, Toll Project Delivery Director
SUBJECT:	Agreement for Completion of Project Approval/Environmental Document for the State Route 91 Eastbound Corridor Operations Project

STAFF RECOMMENDATION:

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

- 1) Award Agreement No. 23-31-041-00 with Parsons Transportation Group, Inc. (Parsons) to provide project approval/environmental document (PA/ED) for the State Route 91 Eastbound Corridor Operations Project (ECOP) in the amount of \$3,464,514, plus a contingency amount of \$346,451, for a total amount not to exceed \$3,810,965;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, execute the agreement on behalf of the Commission; and
- 3) Authorize the Executive Director, or designee, to approve contingency work up to the total not to exceed amount as required for these services.

BACKGROUND INFORMATION:

In May 2022, the Commission authorized staff to proceed with the PA/ED and revalidation of the SR-91 ECOP). The SR-91 ECOP will add a general purpose (GP) lane in the EB direction on SR-91 from SR-241 in Orange County to the SR-71 interchange area in Riverside County (see Exhibit A).

The purpose of the Project is to improve traffic operations and safety along the eastbound SR-91 between SR-241 and SR-71 and complete a component of the SR-91 Corridor Improvement Project (CIP) Ultimate Project.

The SR-91 CIP (EA 0F540) was approved in 2012. Consistent with the environmental impact report/environmental impact statement (EIR/EIS), implementation of the SR-91 CIP will be phased over a 20-year period, beginning with an Initial Phase and culminating with completion of the Ultimate Project by 2035. Separate phases were anticipated to be identified and programmed to implement the improvements on SR-91 and Interstate 15 between the Initial Phase and completion of the Ultimate Project by 2035, as funding becomes available. In May 2020, Orange County Transportation Authority (OCTA), in coordination with RCTC, Transportation Corridor Agencies (TCA), Caltrans, and the cities of Anaheim, Yorba Linda, and Corona initiated the SR-91 ECOP Alternative Analysis study. The purpose of the study was to

identify feasible alternatives and range of cost for adding the SR-91 eastbound operational lane from SR-241 to SR-71 as identified in the SR-91 CIP EIR/EIS. The Alternative Analysis study report was completed in April 2022 and recommends four feasible design variations that range in total cost from \$49 million to \$154 million.

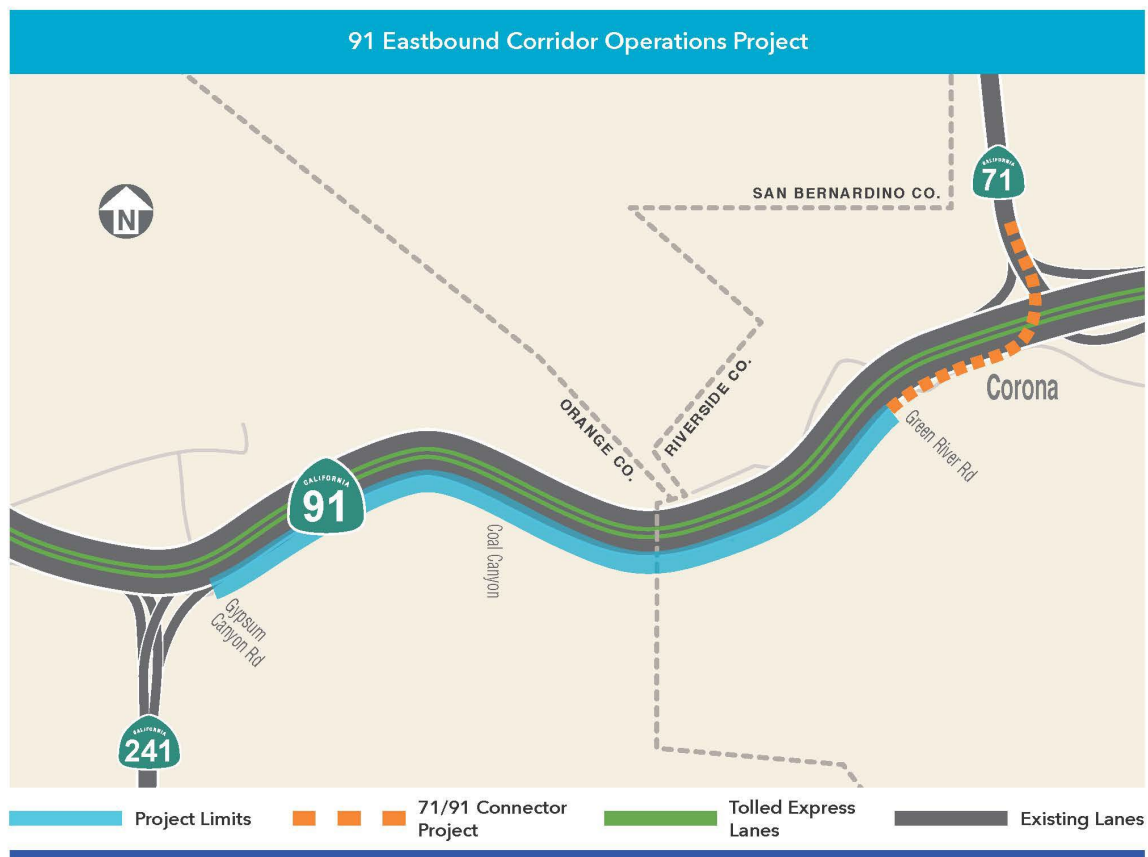


Exhibit A

DISCUSSION:

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 firm experience and stability, quality and experience of key personnel, 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. 23-31-041-00 for the State Route 91 Eastbound Corridor Operations Project was released by staff on January 5, 2023. The RFQ was posted on the Commission's Planet Bids website, which is accessible through the Commission's website. Through Planet Bids, 56 firms downloaded the RFQ; 7 of these firms are located in Riverside County. A pre-submittal meeting was held on January 18, 2023 and was attended by 12 firms. Staff responded to all questions submitted by potential proposers prior to the January 25, 2023 clarification deadline.

One firm –Parsons– submitted a responsive and responsible statement of qualifications prior to the 2:00 p.m. submittal deadline on February 9, 2023. Since staff received one proposal for the RFQ, it reviewed the solicitation specifications for undue restrictiveness and surveyed potential sources that chose not to submit a proposal. Reasons for not submitting a proposal included not performing the particular type of services, and not being able to find other firms to team up with to cover the full scope of work. Staff concluded the requirements listed in the scope of work and other terms and conditions were not unnecessarily or excessively restrictive, an adequate opportunity to compete was provided, and factors other than the solicitation were responsible for the receipt of one proposal for the RFQ.


Based on the evaluation criteria set forth in the RFQ, the firm was evaluated and scored by an evaluation committee comprised of Commission, Caltrans, and Orange County Transportation Authority staff. Accordingly, the evaluation committee recommends contract award to Parsons for the PA/ED for the SR-91 ECOP.

Subsequently, staff negotiated the scope of work (including the appropriate level of effort, labor categories/mix, etc.), cost, and schedule proposal received from Parsons for the PA/ED services and established a fair and reasonable price. The proposed cost is \$3,464,514 which includes the base cost of \$2,782,452 and an optional cost of \$682,062. Due to a wide range of alternative analysis to be performed, there are several optional scope areas included in the agreement. As part of the federal procurement process for architectural and engineering services, the contract is subject to a pre-award audit by Caltrans Audits and Investigations Unit. The result of the pre-award audit may change the proposed cost slightly and is expected to be finalized prior to Commission approval in May 2023.

RECOMMENDATION:

Staff recommends award of Agreement No. 23-31-041-00 to Parsons for PA/ED for the SR-91 ECOP in the amount of \$3,464,514, plus a contingency amount of \$346,451, for a total amount not to exceed \$3,810,965. Staff also 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:

Financial Information					
In Fiscal Year Budget:	N/A	Year:	FY 2023/24 FY 2024/25+	Amount:	\$1,500,000 \$2,310,965
Source of Funds:	STBG, HIP, Local			Budget Adjustment:	No
GL/Project Accounting No.:	003055 261 81101 00000 0000 261 31 81101				
Fiscal Procedures Approved:				Date:	04/14/2023

Attachment: Agreement No. 23-31-041-00 with Parsons

**PROFESSIONAL SERVICES AGREEMENT
WITH FHWA FUNDING/ASSISTANCE**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AGREEMENT WITH
PARSONS TRANSPORTATION GROUP, INC.
FOR THE
COMPLETION OF PROJECT APPROVAL/ENVIRONMENTAL DOCUMENT (PA/ED)
FOR THE STATE ROUTE 91 EASTBOUND CORRIDOR OPERATIONS PROJECT**

Parties and Date.

This Agreement is made and entered into this ____ day of _____, 2023, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and PARSONS TRANSPORTATION 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. 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: Highway Infrastructure Program (HIP), Surface Transportation Block Grant Program (STBG), and Measure A.
- 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 Project Approval/Environmental Document (PA/ED) 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 State Route 91 Eastbound Corridor Operations 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 PA/ED 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 **Nicole DePuy** 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: Nicole DePuy, Mark Firger, Michelle Cooper, Angela Schnapp, Kevin Castro, Brian Patschull, Jon Hermstad, Jeff Sparks, Tomo Takahashi, and Rob Malone.

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.

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, pandemics, 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. 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 19.9 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 of THREE HUNDRED ELEVEN THOUSAND, NINE HUNDRED DOLLARS (\$311,900). 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. 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 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

19.9 The total amount payable by Commission including the fixed fee shall not exceed THREE MILLION, FOUR HUNDRED SIXTY-FOUR THOUSAND, FIVE HUNDRED FOURTEEN DOLLARS (\$3,464,514).

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; 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:

Parsons Transportation Group
3200 E. Guasti Road, Suite 200
Ontario, CA 91761
Attn: Nicole DePuy

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.

54. Electronically Transmitted Signatures; Electronic Signatures. A manually signed copy of this Agreement which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes. This Agreement may be signed using an electronic signature.

[Signatures on following page]

DRAFT

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

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

RIVERSIDE COUNTY TRANSPORTATION COMMISSION By: _____ Anne Mayer Executive Director <i>Approved as to Form:</i> By: _____ Best, Best & Krieger LLP General Counsel	PARSONS TRANSPORTATION GROUP By: _____ Signature _____ Name _____ Title ATTEST: By: _____ Its: _____
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* A corporation requires the signatures of two corporate officers.

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

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

EXHIBIT “A” - SCOPE OF SERVICES

DRAFT

EXHIBIT A (PART 1)

State Route 91 Eastbound Corridor Operations Project (91 ECOP)

Scope of Work

Background

The Riverside County Transportation Commission (Commission), in cooperation with the Federal Highway Administration (FHWA) and the California Department of Transportation (Caltrans), is proposing to add a sixth general purpose (GP) lane in the eastbound (EB) direction from SR-241 in Orange County to SR-71 in Riverside County. The Project improvements are within the Ultimate SR-91 Corridor Improvement Project (CIP) footprint. The SR-91 CIP (0F5400) was approved in 2012. As stated in the approved Environmental Impact Report/Environmental Impact Statement (EIR/EIS), implementation of the SR-91 CIP would be in phases over a 20-year period, beginning with an Initial Phase and culminating with completion of the Ultimate Project by 2035, as funding becomes available. This Project is a component of the Ultimate Project for SR-91 CIP along eastbound SR-91 between SR-241 and SR-71. The purpose of the Project is to improve traffic operations and safety along eastbound SR-91 between SR-241 and SR-71.

Assumptions

- Alternative Analysis includes up to six (6) alternatives during Phase 2. It is assumed that concurrence on the preferred alternative will be obtained prior to proceeding with Phase 3.
- Materials Report and Life Cycle Cost Analysis will not be required as part of the PA/ED phase.
- No Supplemental Survey is required for the PA/ED phase.
- No Value Analysis Study will be required.
- No public hearing will be required for the environmental revalidation effort.
- No Supplemental EIR/EIS is required. If the results of the supplemental technical studies indicate that there are significant or substantial impacts beyond those identified in the SR-91 CIP Final EIR/EIS, dated August 2012, a Supplemental EIR/EIS would be required, which would require an amendment to this scope.
- No Section 4(f) impacts.
- No Section 106 or Native American consultations.
- Paleontological Monitoring Plan is not required as part of the PA/ED and will be prepared during the PS&E phase.
- Jurisdictional Determination Report is not required.
- Focus surveys for plants or animals are not required.
- Utility Potholing is excluded.

Optional Scope of Work

- Air Quality, Climate Change, and Energy Reports
 - Trigger: Air Quality Report, Air Quality Conformity Analysis, Air Quality Conformity Findings Checklist, Climate Change analysis, or Energy Report
- Induced Demand Analysis and Report (VMT Analysis and Report)
 - Trigger: Induced Demand Analysis/VMT Analysis
- Studying up to two (2) additional alternatives during Phase 2, Alternative Analysis.
 - Trigger: More than 6 alternatives require preliminary evaluation or additional engineering analysis is required on the alternatives being evaluated.
- Mindeman Landslide Technical Memorandum

- A technical memorandum is required to justify avoiding impacts to the Mindeman Landslide.
- Structures (Full Standard). The optional scope of work includes Structure Preliminary Geotechnical Design Reports and Advanced Planning Studies for up to three (3) additional nonstandard retaining walls that may be required if a “full standard” alternative is selected.
 - Additional nonstandard walls are required beyond the base scope listed under Task 4.1.11.1.
- Slope Stabilization Alternative Analysis
 - Trigger: Project requires evaluating alternatives to stabilize existing eroding slopes.
- Field Survey of Existing Slopes
 - Trigger: Project requires field survey of existing slopes to accurately evaluate slope stabilization measures.
- Materials Report/Life Cycle Cost Analysis
 - Trigger: Caltrans requires a Materials Report and/or Life Cycle Cost Analysis be prepared as part of the PA/ED phase.

Scope of Work

1. Project Management

1.1. Coordination and Meetings

Consultant shall direct & coordinate the work of its staff and subconsultants throughout the course of the Project. Consultant shall serve as the primary contact for the consultant team in communication with RCTC, Caltrans, OCTA, TCA, Counties, Cities, and other agencies.

Consultant shall coordinate and attend monthly PDT meetings and additional focus meetings. Agendas, meeting minutes, & an action item list shall be prepared by the Consultant and distributed to the PDT at each meeting. Consultant shall conduct weekly teleconference with RCTC staff to provide status updates and shall act as an extension of staff as part of the project management duties and timely delivery of documents.

1.2. Project Administration

Consultant shall execute and maintain subcontracts with each subconsultant. Consultant will perform project administration services consisting of monthly invoicing, monitoring progress against budget, and preparing monthly progress reports.

1.3. Project Schedule

Consultant shall provide a detailed project schedule, indicating milestones, major activities and deliverables. Consultant shall update and submit the schedule on a monthly basis, to coincide with the PDT meetings or as required.

1.4. Project Management Plan

Consultant will develop a Project Management Plan which includes a list of deliverables, milestone submittal schedule, summary of organization responsibilities and contacts, specific scope of work, task budgets, reporting and invoicing procedures, QA/QC plan, and project filing system. The Project Management Plan will include a Risk Management Plan.

1.5. Adjacent Project Coordination

Consultant shall prepare an Adjacent Project Coordination matrix and update periodically to track on-going and planned projects. Consultant shall coordinate with stakeholders and adjacent project owners to stay up to date on adjacent projects.

1.6. Caltrans Encroachment Permit

Consultant will prepare and submit a Caltrans Encroachment Permit Application to obtain a permit for PA/ED field activities including site visits, supplemental survey, and environmental surveys. Consultant will keep this permit active over the course of the PA/ED phase.

Deliverables: Project Management Plan, Project Schedule, Caltrans Encroachment Permit (PA/ED Phase)

1.7. Resource Agency Coordination

Consultant will coordinate with the various resource agencies regarding the environmental commitment record mitigation measures as well as anticipated impacts at Coal Canyon Undercrossing.

2. PHASE 1 : Project Definition

2.1. Project Definition

Consultant shall identify the project limits and project study limits, prepare the draft purpose and need, prepare conceptual exhibits including cross sections for each alternative, and establish independent utility and logical termini for the project.

2.2. Data Collection

2.2.1. Existing Right of Way Mapping

Consultant will field locate cadastral monuments in the project area to establish the right of way along the south side of the SR-91 within the project limits and from record information obtained from RCTC and Caltrans.

2.2.2. Existing Utility Mapping

Consultant will send Letter #1 (As-Built Requests) to utility owners to confirm existing utility base mapping and perform field visit to review existing utilities in the field. Consultant will update the existing utility base mapping as needed and prepare existing utility plans for Supplemental Project Report.

Deliverables: Purpose and Need, Conceptual Exhibits, Existing ROW Mapping, Existing Utility Plans

3. PHASE 2: Alternative Determination

3.1. Alternative Analysis

Consultant will evaluate each viable alternative from the previously prepared Alternative Analysis Report. Consultant will work closely with RCTC to modify the alternatives as needed. Alternatives include express lane ingress/egress design, single versus two lane off ramp at Green River Road, and lane/shoulder widths along SR-91. Up to six (6) alternatives will be evaluated to determine nonstandard features, right-

of-way impacts, utility impacts, impacts to the Mindeman Landslide, bridge and retaining wall impacts, and cost.

3.2. Alternative Analysis Workshops

Consultant will prepare for and attend four alternative analysis workshops with the various project stakeholders. Understanding that all stakeholders may not be able to attend both workshops, up to 8 additional smaller working group meetings will be held with the various stakeholders.

3.3. Alternative Determination Technical Memorandum

Consultant will prepare an Alternative Determination Technical Memorandum documenting the alternatives studied, recommending the preferred alternative, and documenting the justification for each alternative studied but rejected. The general contents of this Technical Memorandum will include:

- Purpose of the Technical Memorandum
- Project Description
- Background
- Preferred Project Alternative
- Alternatives Studied but Rejected from Further Analysis
 - Rough Order of Magnitude Cost Estimate
 - Summary of justification including:
 - Impacts to Mindeman Landslide
 - Significant Environmental Impacts
 - Constructability/Feasibility Issues
 - Utility Impacts
 - Right-of-way impacts
 - Major Nonstandard Features (Lane Widths, Shoulder Widths, Sight Distance)

Consultant will coordinate with project stakeholders to obtain concurrence on the preferred alternative prior to proceeding to Phase 3.

Deliverables: Alternative Analysis Technical Memorandum

4. PHASE 3: Technical Studies – Engineering and Environmental

4.1. Engineering Technical Studies

4.1.1. Supplemental Traffic Analysis

Consultant will utilize information in the following reports:

- 91 CIP Traffic Study Report
- 15/91 ELC Revenue Study
- Traffic volumes and simulation model outputs prepared by RCTC's traffic consultant

The work limits are assumed to be from the SR-91/SR-241/Gypsum Canyon Rd interchange to the SR-91/Green River Rd Interchange. The study limits are one interchange beyond the project work limits.

4.1.1.1. Existing Traffic Counts

Consultant will utilize available traffic counts to the extent possible. Historical traffic data will be supplemented with additional counts collected by the Project team.

4.1.1.2. Traffic Forecasting / Operations Analysis Methodology Memo

Consultant will prepare a Traffic Forecasting/Traffic Operations Analysis Methodology Memo documenting the key input assumptions and methodology to be used to produce existing and future traffic volumes and the procedures and assumptions to be used in the traffic operations analysis and discuss with RCTC and Caltrans staff for concurrence. The memo will be developed based on input from RCTC's traffic consultant to present and document the modeling work and traffic analysis performed. The memo will identify the basic geometry of the Build Alternative and the changes to the existing condition that will constitute the No-Build Alternative. After review by RCTC & Caltrans staff, a Final Technical Memo will be prepared. The memo will be submitted to RCTC and Caltrans for approval prior to undertaking the forecasting work.

Deliverables: Draft & Final Traffic Forecasting / Traffic Operations Analysis Methodology Memo

4.1.1.3. Traffic Data for Noise Analysis Memo

Consultant shall develop a Traffic Data for Noise Analysis Memo documenting the traffic volumes, vehicle composition by lane and speeds to be used for noise studies undertaken for the Environmental Revalidation of the SR-91 Corridor Improvement Project (CIP). Consultant shall coordinate with RCTC's traffic consultant to obtain traffic data and present it in the required formats. The memo will be submitted to RCTC and Caltrans for approval.

Deliverables: Draft & Final Traffic Data for Noise Analysis Memo

4.1.1.4. Supplemental Traffic Operations Analysis Report (TOAR)

Consultant will prepare a supplemental TOAR containing traffic operations analysis. The supplemental TOAR will include procedures and assumptions used in the traffic operations and traffic safety analysis. Available data, reports, and relevant studies will be reviewed in preparation of the supplemental TOAR. In addition, Project related impacts and mitigation measures shall be identified. The study will meet the requirements for NEPA and CEQA documentation required for the project. The results of related studies will be considered and incorporated as appropriate. The supplemental TOAR will be submitted to RCTC and Caltrans for review and approval.

The TOAR will analyze AM and PM peak hour conditions for the following scenarios:

- Existing (Base Year)
- No Build (ETC Year)
- Build (ETC Year)
- No Build (Design Year)
- Build (Design Year)

The TOAR will include the following analyses:

- Mainline Segment Analysis
- Weaving Segment Analysis

- Ramp Merge/Diverge Analysis
- Tolled Express Lane (TEL) Segment Analysis
- Intersection Analysis
- Safety Analysis

Deliverables: Draft & Final Supplemental Traffic Operations Analysis Report

4.1.1.5. VMT Exemption Justification Memo

Consultant will prepare a VMT Exemption Justification Memo to document the justification for not performing induced demand analysis and VMT analysis as part of the revalidation effort. The justification for this includes that the SR-91 CIP EIR/EIS was adopted prior to the implementation of SB 743 and the supplemental traffic analysis is not anticipated to substantially change the initial study's results.

Deliverables: Draft & Final VMT Exemption Justification Memo

4.1.2. Geometric Approval Drawings/Supplemental Design Standard Decision Document

Consultant will provide preliminary engineering services to clearly define the project and gain consensus from project stakeholders. This scope includes preparing the Geometric Approval Drawings for the preferred alternative along with the SDSDD for both Caltrans District 8 and District 12 and holding the necessary workshops and stakeholder comment resolution meetings to obtain approval.

Deliverables: Geometric Approval Drawings and Supplemental Design Standard Decision Document

4.1.3. Storm Water Data Report (SWDR)

Consultant will prepare a Long Form Storm Water Data Report based on the preferred alternative. During this PA/ED phase, the focus of the report will be to establish applicable permanent and temporary BMP requirements. It is assumed that the new impervious surface (NIS) will exceed 1 acre and that treatment will be required for the project, and that it will be feasible to implement such BMPs within the project area. The report will document preliminary treatment BMP sizes, types, and locations, and complete the associated and required checklists. Proposed Design Pollution Prevention BMPs will be identified using the corresponding checklist. Proposed Temporary Construction Site BMPs will also be identified along with the project's risk level. Consultant will coordinate with RCTC and Caltrans to obtain concurrence.

Deliverables: Draft and Final SWDR

4.1.4. Conceptual Drainage Study Report

Consultant will prepare a Conceptual Drainage Study Report. The Conceptual Drainage Study Report will include a preliminary on-site and off-site hydrologic analysis within the project limits for the selected preferred alternative. Preliminary plans will be included that identify drainage impacts within the project limits including the relocation or realignment of existing drainage systems and determine the drainage improvements for on-site and off-site drainage facilities. This will be

identified in coordination with existing and proposed Post Construction Treatment Best Management Practices and will be done for the preferred alternative. There are no expected modifications or encroachments within the regulatory floodway. Caltrans and County drainage systems will be reviewed and the impacts of the preferred alternative on these facilities will be studied. Necessary replacements and/or improvements including incorporation of Post Construction Treatment Best Management Practices will be reflected in the cost estimates. Consultant will coordinate with other agencies regarding their plans for drainage improvements affecting the project. Consultant will coordinate with RCTC and Caltrans to obtain concurrence.

Deliverables: Draft and Final Conceptual Drainage Study Report

4.1.5. Right of Way Data Sheet

Consultant shall prepare the Right of Way (ROW) Data Sheet, including the Utility Relocation Information, for inclusion in the Supplemental Project Report. Consultant will coordinate with RCTC and Caltrans to obtain concurrence.

Deliverables: Draft and Final ROW Data Sheet

4.1.6. Utility Information Sheet and Conflict Matrix

Consultant shall prepare the Utility Information Sheet and Conflict Matrix for inclusion in the Supplemental Project Report. Consultant will coordinate with RCTC and Caltrans to obtain concurrence.

Deliverables: Draft and Final Utility Information Sheet and Conflict Matrix

4.1.7. Cost Estimate for the Preferred Alternative

Consultant shall prepare the standard 11-page cost estimate for the preferred alternative and coordinate with RCTC and Caltrans to obtain concurrence.

Deliverables: Draft and Final 11-page cost estimate

4.1.8. Transportation Management Plan (TMP) Data Sheet

Consultant will prepare a TMP Data Sheet based on the most recent edition of the Caltrans TMP Guidelines. The TMP Data Sheet will identify preliminary costs for TMP strategies such as Public Information, Incident Management, Demand Management, etc. It is assumed that the TMP Data Sheet will be prepared after the preferred alternative has been selected. Consultant will coordinate with RCTC and Caltrans to obtain concurrence.

Deliverables: Draft and Final TMP Data Sheet

4.1.9. Staging Concept Plans

Consultant will prepare Stage Construction Concept Exhibits for the proposed improvements. The Stage Construction Concept Exhibits will identify the work zone and description of work, depict the proposed traffic control layout and temporary traffic control devices such as delineators, barrier, barricades, and temporary striping. Other items such as temporary signage, striping details, and

delineator spacing will not be shown. For the purposes of this proposal, it is assumed that six (6) major construction stages will be depicted, and that up to two (2) rounds of comments will be received by the reviewing agency. It is assumed that the Stage Construction Concept Exhibits will be prepared after the preferred alternative has been selected. Consultant will coordinate with RCTC and Caltrans to obtain concurrence.

Deliverables: Draft and Final Staging Concept Plans

4.1.10. Overhead Sign Concept Plan

Consultant will prepare an Overhead Sign Concept Plan that covers the extent of the project limits and any outlying overhead signs impacted by the proposed project. The Overhead Sign Concept Plan will be limited to showing the overall intended messaging along the corridor to ensure it meets CAMUTCD requirements. This includes existing and proposed overhead sign panels (including Express Lane signs), sign structures (i.e. one post, two post, bridge mounted), changeable message signs, toll gantries, stationing, and existing and proposed striping. The Overhead Sign Concept Plan will not cover items such as electrical components, overhead sign dimensions, sign structure type, and roadside signs unless they are directly relevant to conveying the proposed messaging. It is assumed that the Overhead Sign Concept Plan will be prepared after the preferred alternative has been selected. Consultant will coordinate with RCTC, Caltrans, and FHWA, if needed, to obtain concurrence on the Overhead Sign Concept Plan.

Deliverables: Draft and Final Overhead Sign Concept Plan

4.1.11. Geotechnical Services

The scope of work will include a review of proposed plans, site reconnaissance, review of aerial photographs, review of published geotechnical and seismic maps and other data, and review of existing subsurface information within the corridor; no subsurface exploration is proposed at this stage. Geotechnical analysis, reports, and recommendations will be prepared in accordance with the current Caltrans Geotechnical Manual report guideline modules.

4.1.11.1. Structure Preliminary Geotechnical Report

Consultant will prepare Structure Preliminary Geotechnical Design Reports in support of the Advanced Planning Studies for the following structures. A separate SPGR will be submitted for each structure to support APS as required by and in accordance with “Caltrans Geotechnical Manual, Foundation Reports For Bridges (January 2021)” and “Caltrans Geotechnical Manual, Foundation Reports For Earth Retaining Systems (ERS) (January 2021).”

- County Line Creek Bridge (Widen)
- Coal Canyon Undercrossing (Widen)
- Retaining Wall No. 538 (Sta 538+00), Cut Wall, Approx. Length = 200 ft
- Retaining Wall No. 560 (Sta 560+00), Cut Wall, Approx. Length = 800 ft
- Retaining Wall No. 582 (Sta 582+00), Fill Wall, Approx. Length = 800 ft
- Retaining Wall No. 609 (Sta 609+00), Cut Wall, Approx. Length = 1200 ft

Deliverables: Structure Preliminary Geotechnical Reports

4.1.11.2. Preliminary Geotechnical Design Report

Consultant will prepare a single Preliminary Geotechnical Design Report (PGDR) for the roadway portions of the project. The report will be a paper study (no fieldwork) and provide the necessary information for the PA/ED stage of the project. The report will be prepared based on the proposed PA/ED plans, published geologic and seismic data, available as-built drawings and Log of Test Borings (LOTB) for existing structures, recent subsurface information and geotechnical reports from the SR-91 CIP D-B. The PGDR will be prepared in accordance with "Caltrans Geotechnical Manual, Geotechnical Design Reports (February 2021)" for evaluation of the roadway project alternatives under consideration for project scoping, cost estimating, and geotechnical design considerations.

Deliverables: Draft & Final Preliminary Geotechnical Design Report

4.1.12. Structure Advanced Planning Studies

It is assumed that an Advanced Planning Study will be required for each nonstandard wall and bridge widening. Advanced Planning Studies for the following structures are assumed:

- County Line Creek Bridge (Widen)
- Coal Canyon Undercrossing (Widen)
- Retaining Wall No. 538 (Sta 538+00), Cut Wall, Approx. Length = 200 ft
- Retaining Wall No. 560 (Sta 560+00), Cut Wall, Approx. Length = 800 ft
- Retaining Wall No. 582 (Sta 582+00), Fill Wall, Approx. Length = 800 ft
- Retaining Wall No. 609 (Sta 609+00), Cut Wall, Approx. Length = 1200 ft

Deliverables: Structure Advanced Planning Studies

4.1.13. Supplemental Noise Abatement Decision Report (SNADR)

Consultant will prepare Supplemental Noise Abatement Decision Report (SNADR). Consultant will coordinate with RCTC and Caltrans to obtain concurrence.

Deliverables: Draft and Final SNADR

4.2. Environmental Technical Studies

4.2.1. Initial Site Assessment (ISA) Technical Memorandum

Consultant will prepare ISA Technical Memorandum to update potential impacts from hazardous materials. A new records search would be required along with a field survey to document site conditions. Consultant will coordinate with RCTC and Caltrans to obtain concurrence.

Deliverables: Draft and Final ISA Technical Memorandum

4.2.2. Air Quality Conformity Memorandum

Consultant will prepare Air Quality Conformity Memorandum to document that the previous Air Quality Conformity Determination for the project still stands. This scope of work assumes that the air quality analysis will follow the same approach used for the SR-91 Corridor Operations Project. A Technical Memorandum will be prepared to document the approach used to reach the conclusion

that the previously issued Project Level Conformity Determination for the SR-91 CIP remains valid for obtaining the Record of Decision for the currently proposed improvements associated with the Ultimate SR-91 CIP. This methodology was based on the following three triggers for redetermination of conformity: (1) a significant change in the project's design concept and scope; (2) 3 years' lapse since the most recent major step to advance the project; (3) or initiation of a supplemental environmental document for air quality purposes.

Deliverables: Air Quality Technical Memorandum

4.2.3. Supplemental Noise Study Report

Consultant will prepare a Noise Study Workplan, perform noise measurements, and prepare the Supplemental Noise Study Report. Consultant will coordinate with RCTC and Caltrans to obtain concurrence.

Deliverables: Draft and Final Supplemental Noise Study Report

4.2.4. Natural Resources

Consultant will obtain new species lists, perform field surveys, and prepare a Supplemental Natural Environment Study. Consultant will coordinate with RCTC and Caltrans to obtain concurrence.

Deliverables: Draft and Final Supplemental Natural Environmental Study

4.2.5. Cultural Resources

Cultural Resources Records Search. Consultant will initiate a cultural records search request from the Eastern Information Center (EIC) for the portion of the project area within Riverside County and with the South Central Coastal information Center (SCCIC) for the portion of the project area in Orange County. The records searches will identify known cultural resources and previous investigations situated within a 1.0-mile search radius around the preferred alternative. In addition, the Built Environment Resources Directory (BERD) will be reviewed to identify properties listed on or determined eligible for listing on the National Register of Historic Places (NRHP) and the California Register of Historical Resources (CRHR). Historic-age maps and photographs will be reviewed to determine if there are historic-age (i.e., 50 years old or older) structures or features within the Project area.

Sacred Lands File Search. Consultant will contact the California Native American Heritage Commission (NAHC) for a new/updated Sacred Lands File (SLF) search. Current NAHC lead times are 6 to 8 weeks; Consultant will remain in communication with the NAHC and will alert the Commission and Caltrans if NAHC results cannot be returned within the 6- to 8-week projected timeline. The NAHC will determine whether any reported Native American sacred lands are located within or adjacent to the project area. In addition, the NAHC will provide a list of Native American tribes affiliated with the project area. No new Section 106 or Native American consultations are anticipated.

Cultural Resources Survey. Consultant will perform an intensive cultural resources survey of approximately 4.5 linear miles south of the eastbound lanes of SR-91, between the interchanges

with SR-241 to the west and SR-71 to the east, near Chino, as delineated in the APE map. Fieldwork will examine the Project area for prehistoric and historic-age archaeological sites and historic-age built structures or features. Any newly identified archaeological resources and historic-age elements of the built environment will be mapped and documented in detail. Sufficient information will be collected to prepare a California Department of Parks and Recreation (DPR) 523 site record for each identified resource. Any previously recorded resources will be examined with the site constituents and conditions compared to those originally documented. Any changes or new information will be documented, and an updated DPR 523 record will be prepared.

Supplemental Archaeological Survey Report. Consultant will prepare an Archaeological Survey Report (ASR) summarizing the Project description, regulatory context, environmental setting, and historic, ethnographic, and prehistoric background of the area. The report will describe the methods and results of the records search, SLF search, and pedestrian survey. Any cultural resources identified within the survey area will be described in detail with DPR 523 records provided as a confidential appendix to the report. The report will include recommendations for any further work that may be required, such as formal evaluation of resources for eligibility to the NRHP and CRHR. The report will be prepared following the standards specified by Caltrans in the Standard Environmental Reference (SER), Volume 2: Cultural Resources.

Supplemental Historic Properties Survey Report. Consultant will prepare a Supplemental Historic Properties Survey Report (SHPSR) summarizing the project description, regulatory context, environmental setting, and historic, ethnographic, and prehistoric background of the area. The SHPSR will describe the methods and results of the updated records searches and SLF search and will summarize results from previous cultural resources investigations within the project area. The SHPSR will include recommendations for any further work that may be required, such as formal evaluation of resources for eligibility to the NRHP and CRHR. The report will be prepared following the standards specified by Caltrans in the Standard Environmental Reference (SER), Volume 2: Cultural Resources. Consultant will coordinate with RCTC and Caltrans to obtain concurrence.

Deliverables: Supplemental Archaeological Survey Report, Supplemental Historic Properties Survey Report (SHPSR)

4.2.6. Supplemental Community Impact Assessment Memorandum

Consultant will prepare a Supplemental Community Impact Assessment Memorandum. Consultant will coordinate with RCTC and Caltrans to obtain concurrence.

Deliverables: Draft and Final Supplemental Community Impact Assessment Memorandum

4.2.7. Paleontological Resources

Consultant will prepare a Paleontological Identification Report/Paleontological Evaluation Report (PIR/PER) Memorandum. Since the paleontological records search for the SR-91 CIP was completed more than 10 years ago, supplemental records searches will be requested from the Natural History Museum of Los Angeles County and the Western Science Center. The qualified paleontologist will then produce a Memorandum summarizing any updates to the project description, maps, geology,

paleontological potential, and mitigation recommendations for the project area. The Memorandum will also state if the information in the adopted SR-91 CIP EIR/EIS and previously approved revalidations remains valid with regard to paleontological resources. Consultant will coordinate with RCTC and Caltrans to obtain concurrence.

Deliverables: PIR/PER Memorandum

4.2.8. Energy and Climate Change Memo

Consultant will prepare Energy and Climate Change Memorandum. Consultant will coordinate with RCTC and Caltrans to obtain concurrence. The memorandum will document that the SR-91 ECOP is consistent with Caltrans energy climate change requirements.

Deliverables: Energy and Climate Change Memorandum

4.2.9. Focused Bat Survey and Reporting

Most of the structures within the proposed project area that contain bat roosting habitat have been surveyed within the past few years for other projects, and maternity-season surveys are typically valid for several years provided there are no changes to site conditions. Consequently, recent data can be used to analyze potential impacts from the proposed project and avoid any unnecessary duplication of survey effort. However, the SR-91/SR-241 flyover structures at Gypsum Canyon has not been surveyed since summer 2017. Given that the Canyon and Canyon 2 fires in fall 2017 may have affected roosting habitat south of this flyover along the SR-241, and there is a potential for some of those colonies to have relocated to the SR-241 flyovers, nighttime acoustic and emergence survey may be conducted at those structures, if requested by RCTC or Caltrans.

After the nighttime acoustic and emergence survey is completed, the bat specialist will analyze all acoustic data collected and prepare a brief report documenting the survey results. The report will also include project-specific recommendations to minimize potential adverse effect to bats from the proposed project for incorporation into the project's environmental documents.

PHASE 4: Complete PA/ED and Revalidation

5.1 Supplemental Project Report

Consultant will update the 91 CIP Project Report sections that change or require discussion due to the 91 ECOP. Sections that do not change will be documented as 'no change' within the Supplemental Project Report. The 91 CIP approved Project Report contained the following sections: (***bold italics*** indicates changes are anticipated)

Consultant will prepare SPR Attachments not previously described in Section 4:

- Vicinity Map
- Geometric Plans for the Preferred Alternative (Layouts, Typical Sections, Profiles)

Deliverables: Draft & Final Supplemental Project Report

5.2 Environmental Revalidation and Environmental Commitments Record (ECR)

The Consultant will prepare a CEQA/NEPA Revalidation/Re-Evaluation Form summarizing the results of the environmental impacts associated with the 91 ECOP project. For environmental resources resulting in no change since the previous environmental approval and/or minor change in the environmental setting and/or effects, a short discussion justifying the validity of the Final EIR/EIS will be prepared in the Revalidation Form.

Consultant will review 91 CIP ECR to identify the measures applicable to the 91 ECOP and revise if needed based on the results of the supplemental engineering and environmental technical studies.

Deliverable: CEQA/NEPA Revalidation and Environmental Commitments Record

5.3 Notice of Determination (NOD) / Record of Decision (ROD)

Consultant shall prepare a Notice of Determination (NOD) and Record of Decision (ROD) discussing potential effects of the 91 ECOP. Since the revalidation will not be circulated for public review, response to comments will not be included in the ROD. The following activities will be conducted by the Consultant for this effort:

- Prepare NOD/ROD summarizing the results of the supplemental environmental studies
- Draft Statute of Limitations on Claims and submit to Caltrans for review and approval

Deliverables: NOD/ROD; Statute of Limitation on Claims

6 OPTIONAL SCOPE OF WORK

6.1 Air Quality, Climate Change, and Energy Reports

Consultant will prepare an Air Quality Report (AQR), an Air Quality Conformity Analysis (AQCA), an Air Quality Conformity Findings Checklist, and a Climate Change insert for capacity-increasing projects using annotated outline templates from the Caltrans website. The AQR will analyze operational mobile source emissions from vehicles traversing the Project corridor under existing conditions and in the opening and horizon years with and without the Project using traffic forecast data from the regional transportation model that is assumed will be provided by RCTC's traffic consultant. The AQR will address long-term changes in emissions of ozone precursors, criteria air pollutants, mobile source air toxics (MSATs), and greenhouse gases (GHGs) using the California Air Resources Board (CARB) Emission FACTor (EMFAC) model. The AQR will also address temporary, short-term emissions of air pollutants during construction activities, as well as federal requirements related to Transportation Conformity.

Consultant will evaluate consistency with Regional Conformity by confirming that the Project is programmed in the most recently approved Southern California Association of Governments (SCAG) Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) that has obtained approval of its regional conformity analysis from the Federal Highways Administration (FHWA) and Federal Transit Administration (FTA), as well as the most recent Federal Transportation Improvement Program (FTIP). The Project-Level Conformity assessment will involve ensuring that the Project's proposed improvements are accurately described in the SCAG RTP/SCS entry with the correct opening year, as well as addressing a Hot Spots analysis due to Riverside County's current nonattainment status for the particulate matter (PM) ambient air quality standards. Consultant will prepare a PM Conformity Hot

Spot Analysis to be presented to the SCAG Transportation Conformity Working Group (TCWG). The approach to demonstrating that the Project is not a Project of Air Quality Concern (POAQC) will follow the same tiering evaluation as the 2020 SR-91 COP, in that the Project is captured within the conformity analysis corresponding to the 2012 SR-91 CIP EIR/EIS for the Ultimate Project and less than three (3) years have lapsed since the last major project milestone (SR-91 COP westbound construction). The TCWG determination will be posted via public notice since the environmental document will not circulate.

In addition to the AQR, Consultant will prepare a Climate Change insert for the environmental document developed by Caltrans for capacity-increasing projects. Similar to the AQR, the Climate Change assessment will disclose annual GHG emissions estimated for existing conditions and the opening and horizon year of the Project for the Build and No Build Alternatives. The analysis will also consider the Project's consistency with the SCAG SCS in accordance with Senate Bill 375 and will provide an overview of relevant GHG emissions reduction strategies at the regional and local levels. An adaptation analysis will be included that addresses possible future environmental concerns related to climate change such as sea level rise, precipitation and flooding, wildfires, and extreme heat. This scope accounts for responding to two rounds of comments received from Caltrans review.

Consultant will prepare an Energy Report based on methodology provided by Caltrans in Chapter 13 of the Standard Environmental Reference and using the Energy Analysis Outline (2022). The Energy Report will determine if implementation of the Project would result in the wasteful, inefficient, or unnecessary use of energy, or wasteful use of energy resources. The analysis will include estimating direct energy use during construction activities and long-term changes in energy use (i.e., transportation fuels) indirectly resulting from the additional capacity along the Project corridor. Regarding short-term energy consumption, fuel use will be estimated using the Sacramento Metropolitan Air Quality Management District (SMAQMD) Road Construction Emissions Model (RCEM) and the United States Environmental Protection Agency (U.S. EPA) GHG equivalencies formulas. To address long-term energy consumption, fuel use in the corridor will be estimated using emission factors from the EMFAC model and traffic data provided by the project team (i.e., vehicle miles traveled and vehicle speeds). The Energy Report will also include a qualitative discussion of indirect energy consumption from roadway maintenance, direct energy consumption from lighting, and consistency with local and State Energy Conservation Plans.

Deliverables: Air Quality Report (AQR), Air Quality Conformity Analysis (AQCA), Air Quality Conformity Findings Checklist, Climate Change insert, Energy Report

6.2 Induced Demand Analysis Report

Consultant will run the Regional Travel Demand model runs to forecast vehicle miles traveled (VMT). The induced demand analysis will adhere to the Transportation Analysis Framework (TAF) guidance and will use VMT measurements based on the 2020 SCAG Activity Based Model benchmarked by the National Center for Sustainable Transportation (NCST) Calculator. The analysis will compare the VMT with and without the project to determine if there is a significant impact. If VMT increases occur, the consultant will evaluate mitigation measures to determine their ability to reduce the project's VMT

impacts based on Transportation Analysis under CEQA (TAC) guidelines for evaluating transportation-related projects.

Deliverables: Induced Demand Analysis Report

6.3 Additional Alternative Analysis

Up to two (2) additional alternatives will be evaluated to determine nonstandard features, right-of-way impacts, utility impacts, impacts to the Mindeman Landslide, bridge and retaining wall impacts, and cost. Two additional alternatives will be included in the Alternative Determination Technical Memorandum discussed under Task 3.3.

6.4 Mindeman Landslide Technical Memorandum

Consultant will prepare a technical memorandum addressing the Mindeman Landslide. The technical memorandum will be a desktop study to justify the avoidance of widening alternatives that would impact the landslide area.

Deliverables: Mindeman Landslide Technical Memorandum

6.5 Structures (Full Standard)

6.5.1 Structure Preliminary Geotechnical Report (Full Standard)

In addition to the structures listed in 4.1.11.1, Consultant will prepare Structure Preliminary Geotechnical Design Reports in support of the APS for the following structures. A separate SPGR will be submitted for each structure to support APS as required by and in accordance with “Caltrans Geotechnical Manual, Foundation Reports For Bridges (January 2021)” and “Caltrans Geotechnical Manual, Foundation Reports For Earth Retaining Systems (ERS) (January 2021).”

- Retaining Wall No. 574 (Sta 574+00), Cut Wall, Approx. Length = 600 ft
- Retaining Wall No. 580 (Sta 580+00), Fill Wall, Approx. Length = 170 ft
- Retaining Wall No. 598 (Sta 598+00), Cut Wall, Approx. Length = 860 ft

Deliverables: Structure Preliminary Geotechnical Reports

6.5.2 Structure Advanced Planning Studies (Full Standard)

Additional Structures include:

- Retaining Wall No. 574 (Sta 574+00), Cut Wall, Approx. Length = 600 ft
- Retaining Wall No. 580 (Sta 580+00), Fill Wall, Approx. Length = 170 ft
- Retaining Wall No. 598 (Sta 598+00), Cut Wall, Approx. Length = 860 ft

Deliverables: Structure Advanced Planning Studies

6.6 Slope Stabilization Alternative Analysis

Consultant will evaluate alternatives to stabilize spot locations of eroding slopes along eastbound SR-91. It is assumed that up to 3 locations will be evaluated. A technical memorandum will be prepared to document the existing conditions, alternatives for consideration, and cost. Consultant will evaluate environmental impacts associated with the slope stabilization alternatives. It is assumed that no subsurface investigation will be required as part of this alternative analysis.

Deliverables: Slope Stabilization Technical Memorandum

6.7 Field Survey of Existing Slopes

Consultant will perform field survey of existing slopes to support the Slope Stabilization Technical Memorandum, if necessary. Up to 3 locations are assumed.

Deliverables: Field Survey of Existing Slopes

6.8 Materials Report/Life Cycle Cost Analysis

Consultant shall prepare Materials Report providing pavement section recommendations. A Life Cycle Cost Analysis will be prepared to determine the preferred pavement type.

Deliverables: Materials Report, Life Cycle Cost Analysis

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EXHIBIT “B” - SCHEDULE OF SERVICES

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FIGURE C-7: Schedule

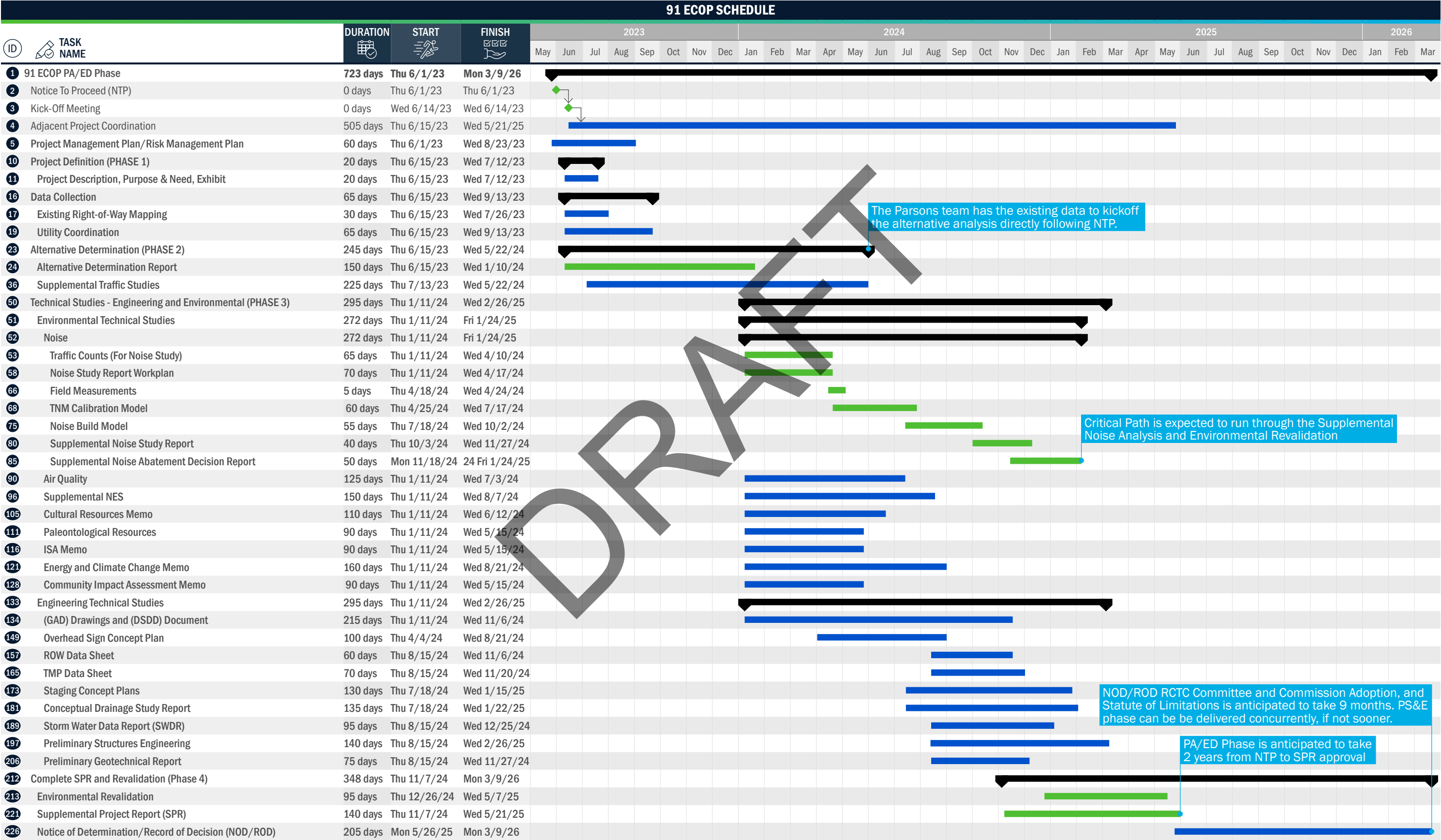


EXHIBIT “C” - COMPENSATION PROVISIONS

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EXHIBIT "C"

COMPENSATION SUMMARY¹

FIRM	PROJECT TASKS/ROLE	COST
Prime Consultant:		
Parsons Transportation Group, Inc.	PA/ED for SR-91 Eastbound Corridor Operations	\$ 2,361,897
Sub Consultants:		
Psomas	Supplemental Survey/ Right-of-Way Mapping	\$ 198,110
Group Delta Consultants, Inc.	Geotechnical	\$ 273,717
LSA Associates, Inc.	Bat Specialist	\$ 5,893
Bargas Environmental Consulting, LLC	Paleontological Studies/Cultural Resources	\$ 17,424
Chen Ryan Associates, Inc.	Staging Concept Plans, TMP Data Sheet, Overhead Sign Concept Plans, Storm Water Data Report, Conceptual Drainage Study	\$ 469,896
Terry A. Hayes Associates, Inc.	Air Quality Suport	\$ 71,977
Vandermost Consulting Services, Inc.	Biological Resources	\$ 65,600
TOTAL COSTS		\$ 3,464,514

¹ 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 "D"

FEDERAL DEPARTMENT OF TRANSPORTATION FHWA AND CALTRANS REQUIREMENTS

1. 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 22% 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. 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 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

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.

DRAFT

EXHIBIT “E” - CONSULTANT DBE COMMITMENT

Consultant to Complete this Section			
1. Local Agency Name: <u>Riverside County Transportation Commission</u>			
2. Project Location: <u>Riverside County, CA</u>			
3. Project Description: <u>Completion of PA/ED for the SR-91 Eastbound Corridor Operations Project</u>			
4. Consultant Name: <u>Parsons Transportation Group</u>			
5. Contract DBE Goal %: <u>22.5%</u>			
DBE Commitment Information			
6. Description of Services to be Provided	7. DBE Firm Contact Information	8. DBE Cert. Number	9. DBE %
Paleontological Studies/Cultural Resources	Bargas Environmental Consulting	41165	0.5%
Staging Concept Plans, TMP Data Sheet, Overhead Sign Concept Plans, Storm Water Data Report, Conceptual Drainage Study	Chen Ryan Associates, Inc.	40083	18%
Air Quality Report	Terry A. Hayes Associates Inc.	40312	1%
Biological Resources	Vandermost Consulting Services, Inc.	40141	3%

EXHIBIT “F” - DISCLOSURE OF LOBBYING ACTIVITIES

DRAFT

Not Applicable**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: <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	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity <input type="checkbox"/> Prime <input type="checkbox"/> 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) \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	14. Type of Payment (check all that apply) <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____	
13. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____		
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 <input type="checkbox"/> No <input type="checkbox"/>		
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: <u>Chris Johnson</u> Print Name: <u>Chris A. Johnson, PE</u> Title: <u>Vice President, Parsons Transportation Group Inc.</u> Telephone No.: <u>858.568.8568</u> Date: <u>2/9/2023</u>		Authorized for Local Reproduction Standard Form - LLL

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

AGENDA ITEM 8

<i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i>	
DATE:	April 24, 2023
TO:	Western Riverside County Programs and Projects Committee
FROM:	Bryce Johnston, Senior Capital Projects Manager
THROUGH:	Erik Galloway, Project Delivery Director
SUBJECT:	Agreement for On-Call Railway Flagging Services for the Riverside County Transportation Commission's Highway and Expressway Projects Encroaching in Burlington Northern Santa Fe

STAFF RECOMMENDATION:

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

- 1) Award Agreement No. 23-31-061-00 to RailPros, Inc., to provide on-call Railway Flagging Services for Riverside County Transportation Commission's (RCTC) current and future highway and/or expressway projects or activities of the Commission within the right of way owned or operated by Burlington Northern Santa Fe (BNSF), for a three-year term, and one, two-year option to extend the agreement, in an amount not to exceed \$2,400,000; and
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement and optional two-year term on behalf of the Commission.

BACKGROUND INFORMATION:

When the Commission's projects encroach into or over the BNSF railroad or operated right of way, BNSF requires the presence of a BNSF flagger. The BNSF flagger coordinates between BNSF forces, contractor employees, BNSF dispatchers, and BSNF trains to ensure the construction crews and operations do not enter the tracks. In addition, flagging services are mandated by federal law when working within close proximity to active rail lines. The BNSF flagging services can only be performed by qualified BNSF personnel or by qualified individuals approved by BNSF. BNSF flagging services and funding are normally included in a construction and maintenance (BNSF C&M) agreement between BNSF and the Commission.

On August 16, 2022, RCTC learned that BNSF would no longer be providing flagging services with BNSF personnel as identified in the BNSF C&M agreements. All flagging services would need to be coordinated through an agreement with an approved third-party company, see Attachment 2. As a result, RCTC would be required to enter into a new agreement with the third-party flagging company.

The Commission has an immediate need for the provision of on-call BNSF flagging services for all highway and expressway projects and maintenance of commuter stations which encroach into BNSF owned railroad or operated right of way.

RCTC has the following ongoing projects which require flagging on BNSF right of way:

1. State Route 71 / SR-91 Interchange Improvement Project
2. Interstate 15 / SR-91 Express Lane Connector
3. Operation and Maintenance of Commuter Stations at:
 - Riverside Downtown
 - Riverside La Sierra
 - Corona North Main
 - Corona West
 - Jurupa Valley / Pedley

RCTC anticipates future needs for flagging within BNSF right of way beyond the projects listed above.

DISCUSSION:

Procurement Process


BNSF identified RailPros Inc. as the only BNSF approved flagging provider in this region, due to their familiarity and expertise, thus necessitating a sole source agreement. The Commission anticipates the use of federal funds for this sole source agreement, which requires Caltrans' approval. Staff has secured Caltrans' approval through a Public Interest Finding (PIF) for SR-71/SR-91 Interchange Improvement Project and will obtain a PIF for each project included in this agreement, see Attachment 3.

FISCAL IMPACT:

Staff recommends approval of Agreement No. 23-31-061-00 between the Commission and RailPros Inc. in the amount of \$2,400,000. This agreement will be funded by the following fund sources:

- Surface Transportation Block Grant (STBG)
- Congestion Mitigation and Air Quality (CMAQ)
- Other future federal funds
- Measure A for local match
- State SB 132
- 91 surplus toll revenue
- Federal Transit Administration (FTA)

Each on-call flagging service requests will utilize the most applicable fund source designated to the project.

Financial Information					
In Fiscal Year Budget:	Yes	Year:	FY 2022/23 FY 2023/24+	Amount:	\$250,000 \$2,150,000
Source of Funds:	STBG, Measure A, State SB 132, FTA CMAQ, 91 Surplus Toll Revenue			Budget Adjustment:	No
GL/Project Accounting No.:	XXXXXX 81304 00000 0000 XXX 31 81301 (Various Projects/Funds)				
Fiscal Procedures Approved:				Date:	04/14/2023

Attachments:

- 1) Draft On-Call Flagging Services Agreement No. 23-31-061-00 with RailPros, Inc.
- 2) BNSF Notification Letter, Dated February 14, 2023
- 3) Public Interest Finding, Dated February 17, 2023

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
ON CALL RAIL FLAGGING SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Agreement is made and entered into this ____ day of _____, 2023 by and between the Riverside County Transportation Commission (“Commission”) and RailPros, Inc., a California corporation. Commission and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

2. RECITALS.

2.1 Commission is the Transportation Commission for the County of Riverside and organized under the laws of the State of California with the power to contract for services necessary to achieve its purpose.

2.2 Commission requires the provision of on-call railway flagging services for certain projects or activities of the Commission within twenty-five feet of the centerline of certain railroad tracks over which Burlington Northern Santa Fe (BNSF) or Union Pacific (UP) operate (collectively, the “Project”).

2.3 Contractor desires to perform and assume responsibility for the provision of the on-call railway flagging services required by Commission on the terms and conditions set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to Commission all labor, materials, tools, equipment, services, and incidental and customary work, as necessary, to fully and adequately provide the on-call railway flagging services (“Services”) The Services are generally described in Exhibit “A”.

3.1.2 Term. The term of this Agreement shall be from the date first set forth above to May 31, 2026, unless earlier terminated as provided herein. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Responsibilities of Contractor.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Commission retains Contractor on an independent contractor basis and not as an employee. Contractor 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 Contractor shall also not be employees of Commission and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. The Commission's Representative shall provide Contractor's Representative (defined below) with a proposed schedule of activities that will take place within twenty-five (25) feet from the centerline of tracks for which Commission will require the Services. The Commission shall provide Contractor with a general description of the proposed activities to be conducted by the Commission. Contractor shall provide the Services expeditiously, on all dates and at all times established and agreed upon by the parties for the Services pursuant to the terms of this Agreement.

In the event of cancellation of scheduled Services the following shall apply: any day for which Consultant is provided less than 24 hours' notice of cancellation shall be considered a billable day for which Consultant shall be entitled to payment in accordance with the terms of this Agreement. Cancellation must be made in writing to BNSF.Info@railpros.com

3.2.3 Commission's Representative. The Commission hereby designates the Executive Director, or his or her designee, to act as its representative for the performance of this Agreement ("Commission's Representative"). Commission's Representative shall have the power to act on behalf of the Commission for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than the Commission's Representative or his or her designee.

3.2.4 Contractor's Representative. Contractor hereby designates Gary Killion, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.5 Coordination of Services. Contractor agrees to work closely with Commission staff in the performance of Services and shall be available to Commission's staff, consultants and other staff at all reasonable times.

3.2.6 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, 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. As provided for in the indemnification provisions of this Agreement, Contractor 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 Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors 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 Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

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

3.2.8 Laws and Regulations; Employee/Labor Certifications. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the Commission, Contractor shall be solely responsible for all costs arising therefrom.

3.2.9 Labor Certification. By its signature hereunder, Contractor 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.

3.2.10 Equal Opportunity Employment. Contractor 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, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.2.11 Insurance.

3.2.11.1 Time for Compliance. Contractor 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, Contractor shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

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

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

(B) Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability*: \$5,000,000 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; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *if Contractor has an employees, 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. Contractor may meet the specified insurance requirements set forth in this Agreement for automobile and general liability through excess or umbrella liability coverage.

3.2.11.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor 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 contractors 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, 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 Contractor or for which the Contractor is responsible; and (2) the insurance coverage shall be primary insurance as respects the Commission, its directors, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor’s scheduled underlying coverage. Any insurance or self-insurance maintained by the Commission, its directors, officials, officers, employees and agents shall be excess of the Contractor’s insurance and shall not be called upon to contribute with it in any way.

(C) Workers’ Compensation and Employers Liability Coverage.

(i) Contractor certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) The insurer shall agree to waive all rights of subrogation against 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 Contractor.

(D) All Coverages.

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

(ii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to the Commission, 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) Contractor shall provide the Commission at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Contractor shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Contractor shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to 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. Contractor shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Contractor shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

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

(vii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, 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 Contractor or Commission will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, Commission may cancel this Agreement. The Commission may require the Contractor 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:

3.2.11.4 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, Contractor 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 Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

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

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

3.2.11.7 Subcontractor Insurance Requirements. Contractor shall not allow any subcontractors or subcontractors 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 subcontractors 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 Contractor, the Commission may approve different scopes or minimum limits of insurance for particular subcontractors or subcontractors.

3.2.12 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of Commission during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.3 Fees and Payments; Labor Code Requirements.

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services provided pursuant to this Agreement, at the rates set forth in Exhibit "A" attached hereto and incorporated herein by reference. The total compensation provided under this Agreement shall not exceed Two Million, Four Hundred Thousand Dollars (\$2,400,000). Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to Commission a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial Task Order commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. Commission shall, within 30 days of receiving such statement, review the statement and pay all approved charges thereon. All invoices not disputed within fifteen (15) days of receipt shall be deemed approved and payable by Commission. Late payments of undisputed invoices shall be subject to a 1.5% fee for every thirty (30) days that payment is delinquent.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by Commission.

3.3.4 Extra Work. At any time during the term of this Agreement, Commission may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by Commission to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from Commission's Representative.

3.3.5 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 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 "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 since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Commission shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor 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 Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the Commission, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.3.6 Payroll Records. In accordance with the requirements of California Labor Code Section 1776, if applicable, Contractor shall keep accurate payroll records which are either on forms provided by the Division of Labor Standards Enforcement or which contain the same information required by such forms.

3.3.7 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 Contractor and all subcontractors must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractor. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements.

3.3.8 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, Contractor 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 Contractor or any sub-contractor for the employment and training of apprentices. Upon issuance of this certificate, Contractor and any sub-contractor 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 Contractor.

3.3.9 Eight-Hour Law. Pursuant to the provisions of the California Labor Code, eight hours of labor shall constitute a legal day's work, and the time of service of any worker employed on the work shall be limited and restricted to eight hours during any one calendar day, and forty hours in any one calendar week, except when payment for overtime is made at not less than one and one-half the basic rate for all hours worked in excess of eight hours per day ("Eight-Hour Law"), unless Contractor or the Services are not subject to the Eight-Hour Law. Contractor shall forfeit to Commission as a penalty, \$50.00 for each worker employed in the execution of this Agreement by him, or by any sub-contractor under him, for each calendar day during which such workman is required or permitted to work more than eight hours in any calendar day and forty

hours in any one calendar week without such compensation for overtime violation of the provisions of the California Labor Code, unless Contractor or the Services are not subject to the Eight-Hour Law.

3.4 Termination of Agreement.

3.4.1 Grounds for Termination. Commission may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to Commission, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, Commission may require Contractor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, Commission may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5 General Provisions.

3.5.1 Delivery of 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:
Railpros
1320 Greenway Drive
Suite 490
Irving, Texas, 75038
Attn: Gary Killion

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.

3.5.2 Indemnification. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the Commission, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any breach of this Agreement or alleged negligent acts, errors or omissions of Contractor, its officials, officers, employees, subcontractors, contractors or agents in connection with the performance of the Services, the Project, or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and reasonable attorneys' fees and other related costs and expenses.

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

3.5.4 Commission's Right to Employ Other Contractors. Commission reserves right to employ other contractors in connection with this Project.

3.5.5 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.6 Assignment or Transfer. Contractor 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. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.5.7 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to Commission include its officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

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

3.5.9 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

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

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

3.5.12 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the Commission's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, Commission shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Commission, during the term of his or her service with Commission, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.13 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.14 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

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

3.5.16 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.17 Electronically Transmitted 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 FOR
ON CALL RAIL FLAGGING SERVICES AGREEMENT
BETWEEN THE RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AND RAILPROS, INC.**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first set forth above.

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

RAILPROS, INC.

Anne Mayer, Executive Director

Signature

Name

Title

Approved as to form:

ATTEST:

Best Best & Krieger LLP

Signature

General Counsel

Name

Title

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

EXHIBIT “A”

SCOPE OF SERVICES AND COMPENSATION

DRAFT

1. SCOPE OF WORK

Provide on-call flagging services to RCTC or its Contractors at the dates, locations and times requested.

Contractor warrants that (i) Services will be provided in a workmanlike manner, (ii) Contractor Personnel will have the requisite experience, skills, knowledge, training and education to perform Services in a professional manner and in accordance with this Agreement.

The Services will be provided in compliance with all governmental laws, regulations, and rules, and in accordance with Maintenance of Way and Signal Department On-Track-Safety Roadway Worker Rules and the Operating Rules.

2. SERVICE LOCATION

The scope of work includes flagging service for the following projects which require flagging on BNSF and Union Pacific Right-of-Way:

1. SR-71 / SR-91 Interchange Improvement Project
2. I-15 / SR-91 Express Lane Connector
3. Operation and Maintenance of Commuter Stations at:
 - Riverside Downtown
 - Riverside La Sierra
 - Corona North Main
 - Corona West
 - Jurupa Valley / Pedley

Future RCTC projects and/or station within BNSF and Union Pacific Right-of-Way will be part of this agreement without the need to amend this agreement.

3. COMPENSATIONS

- 3.1 The rates for each flagger crew are inclusive and include but not limited to vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services.
- 3.2 Services are billed for the Roadway Worker in Charge's (RWIC's) time on site, to include any time setting up and taking down track protection, if applicable.
- 3.3 Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- 3.4 A minimum 24-hour cancellation notice is required, otherwise it is considered a billable day and will be compensated per applicable standard 8-hour day.

3.5 Overtime rate be charged for any hour after the Standard 8-hours day.

3.6 Prevailing Wage Rates

Standard Workday:

Standard 8-hour day..... \$1,350
Overtime per hour \$170

Nights, Weekends, and Holidays:

Standard 8-hour day..... \$1700
Overtime per hour rate..... \$215

3.7 Rates are subject to adjustment based on increases in the applicable state prevailing wage rate as established by the Department of Industrial Relations

3.8 Non-Prevailing Wage Rates

Standard 8-hour day..... \$904.16
Overtime..... \$135.82
Double-time per hour..... \$158.62

DRAFT



Jason L. Sanchez
Manager Engineering

BNSF Railway Company
740 E. Carnegie Drive
San Bernardino, CA 92408
909-386-4470

Jason.Sanchez@bnsf.com

February 14, 2023

Mr. Bryce Johnston:

Per our previous discussions during the pre-construction meeting, be advised that BNSF will not be able to provide flagging services with our own Maintenance of Way employees for 91/71 Connector Project.

Because of the current labor shortages, BNSF has been unable to keep up with our maintenance labor needs, therefore, earlier this year the decision was made by our senior leadership to recall all BNSF employees on flagging positions back to regular BNSF maintenance duties.

I have been instructed to refer all Contractors/Agencies to contracted flagging services for all projects going forward. Currently, RailPros is the only BNSF approved provider of flagging services on BNSF ROW.

Please let me know if you have any questions regarding the new process.

Thank you,

Jason Sanchez

Jason L. Sanchez
BNSF Railway
Manager Engineering
740 E. Carnegie Drive
San Bernardino, CA 92408
909-386-4470
Jason.Sanchez@bnsf.com

Exhibit 12-F: Cost-Effectiveness / Public Interest Finding / A&E Noncompetitive

U.S. DEPARTMENT OF TRANSPORTATION		FEDERAL HIGHWAY ADMINISTRATION		CALIFORNIA DEPARTMENT OF TRANSPORTATION	
COST-EFFECTIVENESS/PUBLIC INTEREST FINDING					
COST-EFFECTIVENESS DETERMINATION REQUIRED			PUBLIC INTEREST DETERMINATION REQUIRED		
<input type="checkbox"/> Use of force account (23 CFR 635.204, 205)* <input type="checkbox"/> Use of publicly owned equipment (23 CFR 635.106) <input type="checkbox"/> Other*: _____ * Requires Caltrans District approval ** Requires FHWA approval			<input type="checkbox"/> Use of publicly furnished materials (23 CFR 635.407) <input checked="" type="checkbox"/> Use of contracting method other than competitive bidding (23 CFR 635.104/204)* <input type="checkbox"/> Use of mandatory borrow/disposal sites (23 CFR 635.407) <input type="checkbox"/> Advertising period less than 3 weeks (23 CFR 635.112)* <input type="checkbox"/> Waiver of Buy America Requirements (23 CFR 635.410)** <input type="checkbox"/> Other*: _____		
A&E NONCOMPETITIVE DETERMINATION REQUIRED					
<input checked="" type="checkbox"/> Use of non-competitive negotiated consultant contracts (23 CFR 172.7) (a) (3)* (Must select one of the limited circumstances)			MUST MEET ONE OF THE FOLLOWING LIMITED CIRCUMSTANCES: <input checked="" type="checkbox"/> Service is available only from a single source <input type="checkbox"/> There is an emergency which will not permit the time necessary to conduct competitive negotiations <input type="checkbox"/> After solicitation of a number of sources, competition is determined to be inadequate		
FEDERAL-AID PROJECT		CLASS OF FEDERAL FUNDS: <input type="checkbox"/> IM <input type="checkbox"/> NH <input type="checkbox"/> STP <input checked="" type="checkbox"/> OTHER:			
		STEWARDSHIP: <input type="checkbox"/> DELEGATED <input type="checkbox"/> HIGH PROFILE			
ID	DIST-CO-RTE- PM	ESTIMATED COST		FEDERAL FUNDS	
HPLU212N-6054(066)	08-RIV-91 R0.6/2.6	800000		800000	
PROJECT SPECIFIC <input checked="" type="checkbox"/>		MULTIPLE PROJECTS <input type="checkbox"/>		REGIONAL/DISTRICTWIDE <input type="checkbox"/> STATEWIDE <input type="checkbox"/>	
GENERAL LOCATION			GENERAL DESCRIPTION OF WORK		
In the City of Corona, CA on the Burlington Northern Santa Fe (BNSF) rail line, San Bernardino Sub, at the Green River On-Ramp to East Bound 91.			Furnish flagging services for the construction of the Green River On-Ramp Overhead Bridge that spans over the BNSF rail line.		
REASONS THAT REQUESTED APPROVAL IS CONSIDERED (STATE):					
RailPros is the only certified company allowed to provide flagging services for BNSF and there are no other choices currently available.					
REMARKS (STATE): FHWA has been consulted.					
PREPARED/APPROVED BY LOCAL AGENCY'S REPRESENTATIVE		REPRESENTATIVE NAME AND TITLE:		Date:	
Erik Galloway		Erik Galloway, Project Delivery Director		11/07/2022	
*APPROVED BY DISTRICT LOCAL ASSISTANCE ENGINEER (DLAE)		DLAE NAME:		Date:	
		Alberto Vergel de Dios, DLAE		02/17/2023	
**APPROVED BY FHWA (Buy America Waiver only)		FHWA REPRESENTATIVE NAME:		Date:	

Distribution: (1) Local Agency File - Original; (2) DLAE - Copy; (3) Caltrans Project Manager - Copy if on the SHS

Exhibit 12-F: Cost-Effectiveness / Public Interest Finding / A&E Noncompetitive**Instructions**

1. Check appropriate box under “Cost-Effective Determination Required,” “Public Interest Determination Required,” or **A&E Noncompetitive Determination Required**. If **A&E Noncompetitive Determination Required** is checked, check one of the limited circumstances.
2. Check “Class of Funds” as follows: IM-Interstate Maintenance, NH-National Highway, STP - State Transportation Program, Other (all other classes).
3. Provide the Federal-aid Project ID number in first column.
4. Identify Caltrans District-County-State Route-Post Mile, or City and street in second column.
5. List Estimated Cost of the portion of the project subject to this PIF.
6. List the amount of the Federal Funds in the portion of the project subject to this PIF.
7. Describe “General Location” applicable to this PIF.
8. Provide “General Description of Work” affected by this PIF.
9. Explain and give “Reasons that requested approval is considered to be cost-effective, in the public’s best interest, or meet **A&E noncompetitive procurement**.” Provide cost analysis or comparison as evidence of cost-effectiveness.
10. “Remarks” is for the Local Agency Representative preparing the Finding.
11. Signature, Name, and Title of Local Agency Representative preparing or approving PIF, as appropriate, and Date.
12. Signature and Name of District Local Assistance Engineer approving the PIF, as required, and Date.
13. Signature and Name of FHWA representative approving the PIF for Buy America waivers, and Date.

RCTC 6054066 PIF

Final Audit Report

2023-02-18

Created:	2023-02-18
By:	Albert Dios (s129500@dot.ca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAIkGg6TMHhwd8lqukznj4s2Vt1z5QRxvc

"RCTC 6054066 PIF" History



Document digitally presigned by Erik Galloway

2022-11-08 - 0:05:12 AM GMT



Document created by Albert Dios (s129500@dot.ca.gov)

2023-02-18 - 2:21:25 AM GMT



Document emailed to Albert Dios (albert.vergel.de.dios@dot.ca.gov) for signature

2023-02-18 - 2:22:01 AM GMT



Email viewed by Albert Dios (albert.vergel.de.dios@dot.ca.gov)

2023-02-18 - 2:22:35 AM GMT



Document e-signed by Albert Dios (albert.vergel.de.dios@dot.ca.gov)

Signature Date: 2023-02-18 - 2:22:46 AM GMT - Time Source: server



Agreement completed.

2023-02-18 - 2:22:46 AM GMT



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AGENDA ITEM 9

RIVERSIDE COUNTY TRANSPORTATION COMMISSION	
DATE:	April 24, 2023
TO:	Western Riverside County Programs and Projects Committee
FROM:	Brian Cunanan, Commuter and Motorist Assistance Manager
THROUGH:	David Knudsen, External Affairs Director
SUBJECT:	Approval of VanClub Vanpool Program Subsidy Increase and Amendments to Leasing Vendor Agreements

STAFF RECOMMENDATION:

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

- 1) Approve VanClub program vanpool subsidy increase from \$400 a month per vanpool to \$600 a month per vanpool, effective July 1, 2023;
- 2) Approve Agreement No. 21-41-021-01, Amendment No. 1 to Agreement No. 21-41-021-00 with Airport Van Rental (AVR Vanpool) to revise the monthly subsidy amount to \$600, effective July 1, 2023, with no change to the term or agreement amount;
- 3) Approve Agreement No. 18-41-038-02, Amendment No. 2 to Agreement No. 18-41-038-00 with California Vanpool Authority (CalVans) to revise the monthly subsidy amount to \$600, effective July 1, 2023, with no change to the term or agreement amount;
- 4) Approve Agreement No. 18-45-063-04, Amendment No. 4 to Agreement No. 18-45-063-00 with Commute with Enterprise (Enterprise) to revise the monthly subsidy amount to \$600, effective July 1, 2023, with no change to the term or agreement amount; and
- 5) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements on behalf of the Commission.

BACKGROUND INFORMATION:

In May 2018, the Commission expanded its Commuter Assistance Program to launch a vanpool subsidy program, VanClub, for commuters who travel to a worksites in western Riverside County. Vanpools help reduce traffic and vehicle emissions by decreasing the number of single occupant vehicles and are an effective transit mode for long distance commuters whose routes or schedules are not served by traditional bus or rail transit. VanClub supports long-distance commuters with a subsidy of up to \$400 per month reducing the cost of a vanpool lease. A similar vanpool subsidy is available to those commuting to eastern Riverside County worksites through the SunLine Transit Agency.

VanClub is operated through a third-party lease or “purchased transportation” arrangement, where the Commission competitively procures for third-party vendor(s), who then provide a leased vehicle to vanpool groups. The lease cost includes the vanpool vehicle, insurance, maintenance and roadside assistance. Each vanpool is responsible for creating a route and schedule, enrolling riders, selecting which leasing vendor they will lease their vehicle from and

once in a lease arrangement, the group pays their monthly lease directly to the leasing vendor (minus the RCTC subsidy). The vendor invoices the Commission for the monthly subsidy and is reimbursed after the Commission receives a detailed report on the vanpool activity for that month, directly from the vanpool group.

The Commission's current vanpool contracts are with two types of vendors: private sector (referred throughout as private leasing vendors) - AVR Vanpool and Enterprise, and a public transit agency/vendor, CalVans. CalVans vanpools primarily serves the agricultural and post-secondary educational markets. As a public transit provider, CalVans takes applications directly from the vanpool groups, leases the vehicles to those groups and reports all program statistics directly into the National Transit Database (NTD). Whereas for the private leasing vendors, those vanpool groups apply directly to VanClub.net and the Commission reviews and approves those applications, oversees those vanpools, reviews monthly reports and inputs data directly into the NTD.

The benefit to reporting into the NTD is that public agencies realize a minimum of \$2 in additional Federal Transit Administration (FTA) Section 5307 funding for every \$1 invested/expended towards the ongoing subsidy program, two years after the reporting year. Some programs nationwide have claimed up to a 3:1 return in funding. To date, VanClub has generated approximately \$8.1 million in FTA Section 5307 and 5339 to Riverside County.

For both types of purchased transportation arrangements, RCTC establishes the minimum program requirements and guidelines, based off of FTA requirements. VanClub's program guidelines requires that each vanpool:

1. Transports commuters traveling to a worksite or a post-secondary educational institution;
2. Counts the driver as an unpaid commuter and all participants (including the driver) are volunteers;
3. Commute each day a minimum of 30 miles round-trip;
4. Commutes to an employer located within Western Riverside County;
5. Commutes at least 12 or more days during a calendar month period;
6. Maintains occupancy requirements, where the ratio of riders to available seats, including the driver (aka occupancy) must be at least 70 percent when a vanpool applies to the program and the vanpool must maintain a minimum occupancy rate of 50 percent or at least four passengers (including the driver); and
7. Permits RCTC to advertise the vanpool and the route to the general public and accept additional riders to fill empty seats.

In general, vanpool programs tend to have the most productive and cost-effective performance of any transit mode. Since inception, VanClub has reduced over 397K trips and 14.4 million miles of travel. The average distance a vanpool travels one-way to work is 45 miles, with an average out of pocket costs (i.e., "fare" in transit terms) of \$5.95 per trip. The Commission investment into the

program is minimal, in that the average farebox return since program launch through June 30, 2022 is 70.2 percent.

By March of 2020, the program had 80 active vanpools enrolled. And with the onset of the COVID-19 Pandemic and given the shelter in place orders implemented at that time, the enrolled vanpools dropped as non-essential workers disbanded their vanpools to work from home. By July 2020, the active vanpools totaled 30, consisting primarily of essential workers travelling to March Air Force Base. Like other transit agencies, there were hopes that the program and ridership would bounce back to pre-pandemic levels by the end of Fiscal Year 2020/21. Unfortunately, a rebound has taken longer and starting in the fall of 2022, VanClub has started to enroll additional vanpools as more workers head back to the workplace.

During this period, RCTC gave the vanpools as much flexibility as possible, and relaxed two of the program’s criteria to accommodate for part-time vanpooling. Additionally, in June 2022 the Commission approved an extra \$100 towards the monthly subsidy for vanpool groups that lease zero emission vehicles. Since zero emission vehicles are more costly to lease, the Commission added this additional subsidy to help reduce congestion while also providing the highest emission reduction benefit possible. Also at this meeting, the Commission also approved to increase the \$2 a day three-month rideshare incentive to \$5 per day, temporarily expanding eligibility to out of county participants commuting to Riverside County worksites and allowing VanClub participants that are new to vanpooling to take advantage of this three-month incentive (in addition to the monthly VanClub subsidy). Although VanClub participation has increased since RCTC took these actions, none of the vanpool groups have yet to lease a zero emission vehicle.

DISCUSSION:

Inflation has significantly increased the cost to participate in a vanpool and diminished the ratio of support provided by the \$400 subsidy amount. The average vanpool lease at program inception was \$937 per month; currently, the average vanpool lease is \$1,251, or 34 percent higher than it was five years ago. In that same timeframe, the average cost of fuel has increased by 26 percent. A vanpool traveling an average of 90 miles roundtrip four days a week (at 20 miles per gallon) translates to an estimated \$347 per month, in fuel costs alone.

VanClub program participants, past and present, expressed sensitivity to the rising costs of vanpooling in a survey completed at the end of 2022. When asked how vanpools can best be supported, increasing the monthly subsidy amount and lowering vanpool lease agreement prices were the highest ranked options. To help keep vanpool an attractive option for commuters that may lack transit options or other mobility alternatives, many neighboring programs have or are planning to increase the monthly subsidy from the traditional \$400 per month level.

Monthly Subsidy	Metro	OCTA	RCTC	SANDAG	SBCTA	VVTA
	\$600	\$400*	\$400*	\$500	\$600**	\$600
*Exploring increase to \$600 per month; ** Effective Fiscal Year 2023/24						

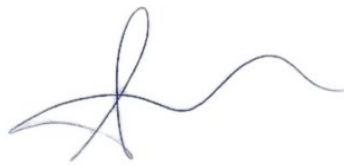
The \$400 a month subsidy was initially established in the mid 1990’s, when the first ongoing vanpool program in California was implemented in San Diego County. In 2007 both Los Angeles and Orange

County jump started their ongoing vanpool programs, offering \$400 a month subsidy. Today, these vanpool subsidy programs operated by Los Angeles County Metropolitan Transportation Authority and San Diego Association of Governments, offer monthly subsidies of \$600 and \$500, respectively. In San Bernardino County, Victor Valley Transit Authority vanpool program offers a monthly subsidy of \$600 and San Bernardino County Transportation Authority is currently at \$400 and is increasing to \$600 next fiscal year. Orange County Transportation Authority is exploring a potential increase to \$600 subsidy level for their vanpool program as well.

To keep up with rising costs and foster additional vanpool participation which will help reduce congestion and improve mobility, as well as generate future FTA Section 5307 for Riverside County transit programs, Staff recommends increasing the VanClub monthly subsidy from \$400 to \$600 per month (and maintaining the additional \$100 for EV vanpool vehicles) and amending existing vanpool leasing vendor contracts to reflect this change.

FISCAL IMPACT

The total value of the revised VanClub subsidy is \$515,400.

Financial Information					
In Fiscal Year Budget:	N/A	Year:	FY 2023/24	Amount:	\$515,400
Source of Funds:	Operating: Western County Measure A; FTA CARES; Mobile Source Air Pollution Reduction Review Committee; Congestion Mitigation and Air Quality Funding			Budget Adjustment:	No N/A
GL/Project Accounting No.:	002187 81030 00000 0000 263 41 81002				
Fiscal Procedures Approved:				Date:	04/14/2023

Attachments:

- 1) Airport Van Rental Vanpool Agreement No. 21-41-021-01
- 2) California Vanpool Authority Agreement No. 18-41-038-03
- 3) Enterprise Agreement No. 18-45-063-04

**AMENDMENT NO. 1 TO
VANPOOL SUBSIDY PROGRAM AGREEMENT
WITH AIRPORT VAN RENTAL**

1. PARTIES AND DATE

This Amendment No. 1 to Vanpool Subsidy Program Agreement is entered into as of June 30, 2023, by and between the Riverside County Transportation Commission ("Commission") and Airport Van Rental ("Consultant").

2. RECITALS

- 2.1 The Commission and Consultant have entered into an agreement dated January 20, 2021, for the purpose of engaging Contractor as a provider of qualified vehicles to be leased under the RCTC Vanpool Subsidy Program by participants, and to provide such other services as detailed therein (the "Master Agreement").
- 2.2 The Commission and Consultant now desire to further amend the Master Agreement in order to update the maximum monthly subsidy amount paid to the Contractor to Six Hundred Dollars (\$600) per vanpool and provide eligible vanpools using electric powered vehicles (EV) an additional subsidy of One Hundred Dollars (\$100) per EV vanpool.

3. TERMS

- 3.1 "Article 3. - Compensation, Section 3.2" shall be updated to provide a maximum monthly subsidy amount of Six Hundred Dollars (\$600) per vanpool paid to the Contractor and provide eligible vanpools using electric powered vehicles (EV) an additional subsidy of One Hundred Dollars (\$100) per EV vanpool.
- 3.2 Except as amended by this Amendment No. 1, 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 No. 1.
- 3.3 This Amendment No. 1 shall be construed and interpreted according to California law, and any action to enforce the terms of this Amendment or for the breach thereof shall be brought and tried in the County of Riverside.
- 3.4 A manually signed copy of this Amendment No. 1 which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment No. 4 for all purposes. This Amendment No. 1 may be signed using an electronic signature.
- 3.5 This Amendment No. 1 may be signed in counterparts, each of which shall constitute an original.

[Signatures on following page]

**SIGNATURE PAGE
TO
AMENDMENT NO. 21-41-021-01**

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

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

AIRPORT VAN RENTAL

By: _____
Anne Mayer
Executive Director

By: _____
Signature

Name

Title

APPROVED AS TO FORM:

ATTEST:

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

By: _____
Its: _____

* A corporation requires the signatures of two corporate officers.

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

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

**AMENDMENT NO. 3 TO
INTERAGENCY AGREEMENT FOR VANPOOL SERVICES
BY AND BETWEEN
THE RIVERSIDE COUNTY TRANSPORTATION COMMISSION AND
THE CALIFORNIA VANPOOL AUTHORITY**

1. PARTIES AND DATE

This Amendment No. 3 to Interagency Agreement for Vanpool Services is made and entered into as of June 30, 2023, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION, a county transportation commission established by Public Utilities Code section 130000, et. seq. (hereinafter referred to as "RCTC" or "CLIENT") and the California Vanpool Authority, a joint powers authority established under the Joint Exercise of Powers Act (hereinafter referred to as "CALVANS" or "CONTRACTOR"). CLIENT and CONTRACTOR are each a "PARTY" and collectively the "PARTIES".

2. RECITALS

- 2.1 RCTC and CALVANS have entered into an agreement dated November 9, 2017 for the purpose of encouraging increased vanpool use in Western and Southern Riverside County by providing the provision of vanpool services ("Master Agreement").
- 2.2 RCTC and CALVANS have entered into an Amendment No. 1 dated June 30, 2020 for the purpose of extending the term of the Master Agreement to June 30, 2022 for the continued provision of providing vanpool services.
- 2.3 RCTC and CALVANS have entered into an Amendment No. 2 dated June 30, 2022 for the purpose of extending the term of the Master Agreement to June 30, 2025 for the continued provision of providing vanpool services.
- 2.4 The PARTIES now desire to further amend the Master Agreement in order to update the maximum monthly subsidy amount paid to the Contractor to Six Hundred Dollars (\$600) per vanpool and provide eligible vanpools using electric powered vehicles (EV) an additional subsidy of One Hundred Dollars (\$100) per EV vanpool.

3. TERMS

- 3.1 "Section 5 – Compensation" shall be updated to provide a maximum monthly subsidy amount of Six Hundred Dollars (\$600) per vanpool paid to the Contractor and provide eligible vanpools using electric powered vehicles (EV) an additional subsidy of One Hundred Dollars (\$100) per EV vanpool.
- 3.2 Except as amended by this Amendment No. 3, 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 No. 3.
- 3.3 This Amendment No. 3 shall be construed and interpreted according to California law, and any action to enforce the terms of this Amendment or for the breach thereof shall be brought and tried in the County of Riverside.

- 3.4 A manually signed copy of this Amendment No. 3 which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment No. 3 for all purposes. This Amendment No. 3 may be signed using an electronic signature.
- 3.5 This Amendment No. 3 may be signed in counterparts, each of which shall constitute an original.

[Signatures on following page]

**SIGNATURE PAGE
TO
AMENDMENT NO. 18-41-038-03**

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

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

CALIFORNIA VANPOOL AUTHORITY

By: _____
Anne Mayer, Executive Director

By: _____
Georgina Landecho, Executive Director

APPROVED AS TO FORM:

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

**AMENDMENT NO. 4 TO
VANPOOL SUBSIDY PROGRAM AGREEMENT
WITH ENTERPRISE**

1. PARTIES AND DATE

This Amendment No. 4 to Vanpool Subsidy Program Agreement is entered into as of June 30, 2023, by and between the Riverside County Transportation Commission ("Commission") and Enterprise Rent-A-Car Company of Los Angeles, LLC, a Delaware limited liability company, DBE Enterprise Rideshare ("Contractor").

2. RECITALS

- 2.1 The Commission and Contractor have entered into an agreement dated March 7, 2018, for the purpose of engaging Contractor as a provider of qualified vehicles to be leased under the RCTC Vanpool Subsidy Program by participants, and to provide such other services as detailed therein (the "Master Agreement").
- 2.2 The Commission and the Consultant have entered into Amendment No. 1 to the Master Agreement, dated March 24, 2021, for the purpose of extending the term for continued qualified vehicle provider services.
- 2.3 The Commission and the Consultant have entered into Amendment No. 2 to the Master Agreement, dated March 31, 2022, for the purpose of extending the term for continued qualified vehicle provider services and to replace "Exhibit B" of the Master Agreement.
- 2.4 The Commission and the Consultant have entered into Amendment No. 3 to the Master Agreement, dated March 2, 2023, for the purpose of extending the term for continued qualified vehicle provider services.
- 2.5 The PARTIES now desire to further amend the Master Agreement in order to replace "Exhibit B" of the Master Agreement.

3. TERMS

- 3.1 "Exhibit B – Vehicle Subsidy" shall be replaced in its entirety with Exhibit B attached to this Amendment No. 4.
- 3.2 Except as amended by this Amendment No. 4, 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 No. 4.
- 3.3 This Amendment No. 4 shall be construed and interpreted according to California law, and any action to enforce the terms of this Amendment or for the breach thereof shall be brought and tried in the County of Riverside.
- 3.4 A manually signed copy of this Amendment No. 4 which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same

legal effect as delivery of an original executed copy of this Amendment No. 4 for all purposes. This Amendment No. 4 may be signed using an electronic signature.

- 3.5 This Amendment No. 4 may be signed in counterparts, each of which shall constitute an original.

[Signatures on following page]

**SIGNATURE PAGE
TO
AMENDMENT NO. 18-45-063-04**

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

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

**ENTERPRISE RENT-A-CAR
COMPANY OF LOS ANGELES,
LLC DBE ENTERPRISE
RIDESHARE**

By: _____
Anne Mayer, Executive Director

By: _____
Signature

Name

Title

APPROVED AS TO FORM:

ATTEST:

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

By: _____
Its: _____

* A corporation requires the signatures of two corporate officers.

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

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

EXHIBIT "B"

VEHICLE SUBSIDY

Fifty percent (50%) of the total lease cost per Vehicle, not to exceed Six Hundred Dollars (\$600) per Vehicle.

Eligible Vanpools using electric powered vehicles (EV) may receive an additional subsidy of One Hundred Dollars (\$100) per Vehicle.

AGENDA ITEM 10

<i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i>	
DATE:	April 24, 2023
TO:	Western Riverside County Programs and Projects Committee
FROM:	Gary Ratliff, Facilities Administrator
THROUGH:	Erik Galloway, Project Delivery Director
SUBJECT:	Agreement for Elevator Maintenance, Inspection and Repair Services

STAFF RECOMMENDATION:

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

- 1) Approve Agreement No. 23-24-046-00 with Amtech Elevator Services to provide elevator maintenance, inspection and repair services for a three-year term, and one, two-year option to extend the agreement, in the amount of \$400,000, plus a contingency amount of \$50,000, for a total amount not to exceed \$450,000; and
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to finalize and execute the agreement, on behalf of the Commission.

BACKGROUND INFORMATION:

The Commission owns nine commuter rail stations in Riverside County. Four of the nine stations offer elevator services to station patrons. The La Sierra, North Main Corona, Riverside Downtown, and West Corona stations each have two elevators located near the platform, for a total of eight elevators. The two elevators located in the North Main Corona station parking structure are not included as part of this agreement, as they are covered under a separate agreement with ThyssenKrupp Elevator Corporation, due to issues regarding warranty coverage and certain proprietary elevator controls.

Over the past four years each of eight elevators have gone through an elevator modernization process to update each elevator system. Elevator maintenance services are essential to provide continued assistance and safety for station patrons and to provide reliable and consistent performance of all elevators, as well as preserving and maintaining Commission property.

On May 11, 2016, the Commission approved an elevator services agreement with an initial three-year term, and two two-year options for an amount not to exceed \$605,000 to cover the eight elevators at the existing commuter rail stations. Currently, the agreement is in its last option year and expires June 30, 2023. The new agreement will allow the Commission to maintain and repair the elevators at the commuter rail stations.

The Commission requires the services of a qualified elevator contractor to provide elevator preventative maintenance service intervals, repair state inspection items and respond to on-call repair services.

Scheduled monthly maintenance and inspection includes examining, adjusting, cleaning, lubricating, and testing of the motor, machine, controller, safety devices, and other elevator components and equipment. Additionally, on-call repair services can be requested by Commission staff on an as-needed basis for unanticipated repair and emergency situations not covered under maintenance services.

Under Commission supervision, monthly maintenance services would be conducted at each station for a fixed price during the term of the agreement, which shall not exceed five years. On-call repair services would be requested on an as-needed basis, and pricing for that work would be based on the successful contractor's proposed fixed labor rates and fixed markup on equipment and/or materials.

Procurement Process

Staff determined the weighted factor method of source selection to be the most appropriate for this procurement, as it allows the Commission to identify the most advantageous proposal with price and other factors considered. Non-price factors include elements such as qualifications of firm and personnel and understanding and approach for elevator maintenance, inspection, and repair services as set forth under the terms of Request for Proposals (RFP) No. 23-24-046-00.

RFP No. 23-24-046-00 for Elevator Maintenance, Inspection and Repair Services was released by staff on February 24, 2023. The RFP was posted on the Commission's PlanetBids website, which is accessible through the Commission's website. Utilizing PlanetBids, emails were sent to 303 firms, zero (0) of which are located in Riverside County. Through the PlanetBids site, 10 firms downloaded the RFP. Staff responded to all questions submitted by potential proposers by March 16, 2023. Amtech Elevator Services (Cerritos, CA) and AZTech Elevator Company (Los Angeles, CA) - submitted responsive proposals prior to the 2:00 p.m. submittal deadline on March 30, 2023. Utilizing the evaluation criteria set forth in the RFP, all firms were evaluated and scored by an evaluation committee comprised of Commission staff.


As a result of the completion of the evaluation process, the evaluation committee recommends contract award to Amtech Elevator Services. to provide elevator maintenance, inspection, and repair services for a three-year term, and one, two-year option to extend the agreement, as this firm earned the highest total evaluation score. A summary of the proposed costs submitted with the written proposals and the total evaluation score rankings following the final evaluation are summarized below:

Firm	Price	Overall Ranking
Amtech Elevator Services	\$240,880.00	1
AZTech Elevator Company	\$352,500.00	2

Accordingly, staff recommends the award of an agreement for elevator maintenance, inspection, and repair services for a three-year term, and one, two-year option to extend the agreement to Amtech Elevator Services in an amount of \$400,00, plus a contingency amount of \$50,000, for a total amount not to exceed \$450,000. The Commission's standard form professional services agreement will be entered into with Amtech Elevator Services subject to any changes approved by the Executive Director, pursuant to legal counsel review. Staff also recommends authorization for the Chair or Executive Director to finalize and execute the agreement.

FISCAL IMPACT:

This project has a budget of \$450,000 for up to a five-year period. Funding for this project is comprised of a Measure A and State of Good Repair (SGR) Grants.

Financial Information					
In Fiscal Year Budget:	Yes N/A	Year:	FY 2023/24 FY2024/25 +	Amount:	\$50,000 \$400,000
Source of Funds:	2009 Measure A Western County Rail Funds/SGR Grant			Budget Adjustment:	No N/A
GL/Project Accounting No.:	244001 73301 00000 0000 265 24 73301 244003 73301 00000 0000 265 24 73301 244004 73301 00000 0000 265 24 73301 244006 73301 00000 0000 265 24 73301 004011 90701 (00113,00114,00115,00116) 4141 265 33 90501				
Fiscal Procedures Approved:				Date:	04/14/2023

Attachment: Draft Agreement No. 23-24-046-00 with Amtech Elevator Services

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AGREEMENT FOR ELEVATOR MAINTENANCE, INSPECTION AND REPAIR
SERVICES WITH [__CONSULTANT__]**

1. PARTIES AND DATE.

This Agreement is made and entered into this __ day of ____, 2023, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and [__NAME OF FIRM__] ("Consultant"), a [__LEGAL STATUS OF CONSULTANT e.g., CORPORATION__].

2. RECITALS.

2.1 Consultant desires to perform and assume responsibility for the provision of certain professional consulting services required by Commission on the terms and conditions set forth in this Agreement. Consultant represents that it is a professional consultant, experienced in providing elevator maintenance, inspection and repair services to public clients, is licensed in the State of California, and is familiar with the plans of Commission.

2.2 Commission desires to engage Consultant to render professional elevator maintenance, inspection and repair services project ("Project") as set forth herein.

2.3 The Project will be funded, in part, with federal funding from the Federal Transit Administration ("FTA"). Consultant shall comply with all applicable FTA requirements.

3. TERMS.

3.1 General Scope of Services. Consultant promises and agrees to furnish to Commission all labor materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately provide professional consulting services and advice on various issues affecting the decisions of Commission regarding the Project and on other programs and matters affecting Commission, hereinafter referred to as "Services". The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules and regulations.

3.2 Term. The term of this Agreement shall be from the date first specified above to _____, 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.

3.3 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 required 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 the Commission, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.4 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant under its supervision. Consultant will determine the means, method and details of performing the Services subject to the requirements of this Agreement. Commission retains Consultant on an independent contractor basis and Consultant is not an employee of 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 not be employees of Commission and 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 under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

3.5 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of Commission.

3.6 Substitution of Key Personnel. Consultant has represented to 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 and experience upon written approval of Commission. In the event that Commission and Consultant cannot agree as to the substitution of key personnel, Commission shall be entitled to terminate this Agreement for cause, pursuant to provisions of Section 3.16 of this Agreement. The key personnel for performance of this Agreement are as follows: _____.

3.7 Commission's Representative. Commission hereby designates **[__INSERT NAME OR TITLE__]**, or his or her designee, to act as its representative for the performance of this Agreement ("Commission's Representative"). Commission's representative shall have the power to act on behalf of Commission for all purposes under

this Agreement. Consultant shall not accept direction from any person other than Commission's Representative or his or her designee.

3.8 Consultant's Representative. Consultant hereby designates **[__INSERT NAME OR TITLE__]**, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.9 Coordination of Services. Consultant agrees to work closely with Commission staff in the performance of Services and shall be available to Commission's staff, consultants and other staff at all reasonable times.

3.10 Standard of Care; Licenses. Consultant shall perform the Services under this Agreement in a skillful and competent manner, consistent with the standard generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, 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 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 safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the Commission, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.11 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. 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 Commission, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold Commission, its officials, directors, officers, employees and agents free and harmless, pursuant to the

indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.12 Insurance.

3.12.1 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.

3.12.2 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; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *if Consultant has an employees, Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Practices Liability limits of \$1,000,000 per accident.

3.12.3 Professional Liability. Reserved.

3.12.4 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, its directors, officials, officers, employees and agents shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Commission, its directors, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Commission, its directors, officials, officers, employees and agents shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(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, 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.

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

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

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

3.12.8 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.

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

3.14 Fees and Payment.

3.14.1 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. The total compensation shall not exceed [**INSERT WRITTEN DOLLAR AMOUNT**] (\$[**INSERT NUMERICAL DOLLAR AMOUNT**]) without written approval of Commission's Executive Director ("Total Compensation"). Additional Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.14.2 Payment of Compensation. Consultant shall submit to Commission a monthly 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. Commission shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

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

3.14.4 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.

3.15 Financial Provisions; Records Retention; Audit.

3.15.1 Cost Principles and Administrative Requirements.

(a) 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.

(b) 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.

(c) 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.

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

3.15.2 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.

3.15.3 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.

3.15.4 Audit Review Procedures.

(a) 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.

(b) 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.

(c) 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.

3.16 Termination of Agreement.

3.16.1 Grounds for Termination. Commission may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof. Upon termination, Consultant shall be compensated only for those services which have been fully and adequately rendered to Commission through the effective date of the termination, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.16.2 Effect of Termination. If this Agreement is terminated as provided herein, Commission may require Consultant to provide all finished or unfinished Documents and Data, as defined below, and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.16.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, Commission may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.17 Delivery of 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:

Attn: _____

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.

3.18 Ownership of Materials/Confidentiality.

3.18.1 Documents & Data. This Agreement creates an exclusive and perpetual license for Commission to copy, use, modify, reuse, or sub-license any and all copyrights and designs embodied in plans, specifications, studies, drawings, estimates, materials, data and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data").

Consultant shall require all subcontractors to agree in writing that Commission is granted an exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement.

Consultant represents and warrants that Consultant has the legal right to grant the exclusive and perpetual license for all such Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the Commission.

Commission shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at Commission's sole risk.

3.18.2 Intellectual Property. In addition, Commission shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media ("Intellectual Property") prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement.

The Commission shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for wholly or in part by Commission, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of Commission.

Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of the Commission.

All materials and documents which were developed or prepared by the Consultant for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Consultant. However, unless otherwise identified and stated prior to execution of this Agreement, Consultant represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

Commission further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.

3.18.3 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of Commission, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use Commission's name or insignia,

photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of Commission.

3.18.4 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.

3.19 Equipment Purchase

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.

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.

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.

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

3.20 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this

Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of such actions.

3.21 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.

3.22 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be supplemented, amended, or modified by a writing signed by both parties.

3.23 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

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

3.25 Commission's Right to Employ Other Consultants. The Commission reserves the right to employ other consultants in connection with this Project.

3.26 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.

3.27 Prohibited Interests and Conflicts.

3.27.1 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, Commission shall have the right to rescind this Agreement without liability.

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

3.27.3 Conflict of Employment. Employment by the Consultant of personnel currently on the payroll of the Commission shall not be permitted in the performance of this Agreement, even though such employment may occur outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, the employment by the Consultant of personnel who have been on the Commission payroll within one year prior to the date of execution of this Agreement, where this employment is caused by and or dependent upon the Consultant securing this or related Agreements with the Commission, is prohibited.

3.27.4 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.

3.28 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any 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. Consultant shall also comply with all relevant provisions of

Commission's Disadvantaged Business Enterprise program, Affirmative Action Plan or other related Commission programs or guidelines currently in effect or hereinafter enacted.

3.29 Subcontracting. Consultant shall not subcontract any portion of the work or Services required by this Agreement, except as expressly stated herein, without prior written approval of the Commission. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.30 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.

3.30.1 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.

3.31 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.

3.32 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.

3.33 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.

3.34 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.

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

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

3.37 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.

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

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

3.40 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.

3.41 Provisions Applicable When Federal Funds Are Involved. Since funding for the Services is provided, in whole or in part, from the FTA, Consultant shall fully and adequately comply with the provisions included in Exhibit "D" (FTA Requirements) attached hereto and incorporated herein by reference.

3.42 Conflicting Provisions. In the event that provisions of any attached exhibits conflict in any way with the provisions set forth in this Agreement, the language, terms and conditions contained in this Agreement shall control the actions and obligations of the Parties and the interpretation of the Parties' understanding concerning the performance of the Services, except for any FTA Requirements, which shall govern, unless otherwise approved by the Commission.

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

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

3.45 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.46 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.47 Electronically Transmitted 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.

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**SIGNATURE PAGE
TO
RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AGREEMENT FOR ELEVATOR MAINTENANCE, INSPECTION AND REPAIR
SERVICES WITH [__CONSULTANT__]**

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

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

**CONSULTANT
[INSERT NAME OF CONSULTANT]**

By: _____
[INSERT NAME]
[INSERT RCTC SIGNATOR]

By: _____
Signature

Name

Title

Approved as to Form:

Attest:

By: _____
Best Best & Krieger LLP
General Counsel

By: _____
Its: _____

* A corporation requires the signatures of two corporate officers.

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

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

Exhibits A, B and D to be inserted from RFP
Exhibit C to be inserted from successful proposal

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